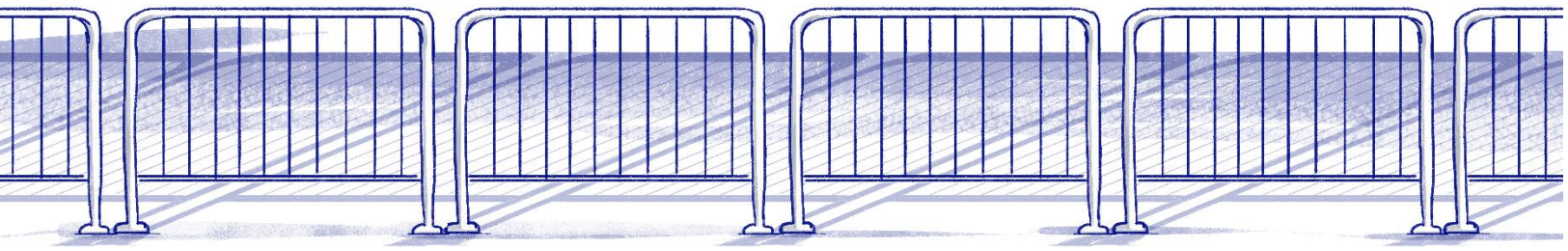
Freedom of Expression in Georgia



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Introduction

The present report gives a systematic analysis of the recent situation in terms of freedom of expression in Georgia. It also summarises the cases argued by GDI before the Constitutional Court of Georgia, courts of general jurisdiction and regional courts.

The report is mostly based on the desk research method and analysis of legislative initiatives, draft laws, administrative practice of the present authorities and representatives of the ruling party, especially with regard to demonstrators as well as important court decisions (both favourable and unfavourable) adopted with regard to freedom of expression. The report also incorporates the analysis of national legislation and practice, international standards and court practice pertaining to freedom of expression.

The issues studied by GDI and its legal analysis of the current events clearly indicate that all three branches of the government purposefully endeavour to restrict freedom of expression to the maximum extent. Such an approach directly affects the quality of democracy in the country. The report identifies specific incidents and trends in the restriction of freedom of expression by the authorities in various aspects.

The events analysed in the report show that the authorities restricted the freedom to assembly and demonstration, in violation of the regulatory framework, in several cases. In most cases, the law-enforcement authorities' response to demonstrators' actions is based on the principle of selective justice. The law-enforcement authorities follow a disproportionately severe approach towards the demonstrations critical of the government.

This approach makes it evident that the actions of the law-enforcement authorities are aimed at restricting freedom of expression rather than responding to violations. Another issue of concern is the use of disproportionate force against demonstrators by law-enforcement agencies. It is further confirmed by the case-law of the national courts, which tend to impose particularly strict sanctions on the persons arrested when exercising their right to assembly and demonstration. Such an approach may have a chilling effect in terms of expressing critical views.

It is also noteworthy that the government does not fulfil properly its positive obligations; it does not take adequate measures to prevent third parties' unjustified interference with the exercise of the right to freedom of assembly and demonstration. The failure to respond adequately to the illegal actions of the violent ultra-nationalist groups ultimately results in an unjustified burden on the exercise of freedom of expression of minorities thus hindering the establishment of a tolerant and pluralistic society.

The report identified another deplorable trend in the state policy towards independent and critical media. In some cases, the state attacks directly free and independent media on a selective basis (the Public Broadcaster of Ajara and the selective tax policy against TV Kavkasia and TV-Pirveli) and, in some instances, prosecutes senior managers of broadcasters. The systemic and contextual analysis of the events clearly indicates that such actions are aimed at suppressing the views critical of the authorities, influencing the marketplace of ideas artificially and reinforcing political influence at the

expense of deterioration of human rights situation in the country. Furthermore, decisions of the Georgian National Communications Commission demonstrate that its functioning goes hand in hand and is orchestrated by the government. This agency works as a media censor restricting freedom of media even when it is beyond its mandate and constitutional standards.

The issue of striking a fair balance between freedom of expression and the legitimate aim of maintaining the authority of the judiciary is another point of concern. Domestic courts often brand value judgments as defamation and expression of a position regarding the judiciary in the context of public discourse as an attack against the authority of the judiciary; restriction of a person's right to freedom of expression under the pretext of the protection of the authority of the judiciary contradicts the interest of maintaining public discourse about the judiciary as a branch of government and diminishes the quality of transparency of the processes in the state institutions.

Another alarming trend is the attempt of the authorities to introduce regulations restricting freedom of expression under the pretext of preventing offending religious feelings. The right to freedom of expression should be regulated with due respect for the principle of neutrality. However, both administrative bodies and courts tend to negate the principle of ethical neutrality and instead restrict the right to freedom of expression under the pretext of protecting the values and opinions dominant in the society. According to the Constitutional Court, the Constitution of Georgia protects objectively identifiable interests but not subjective feelings; the society must be tolerant towards the expression of ideas that are shocking and even morally deplorable. The attempt of the authorities to protect abstract ideals and values amount to an unnecessary burden on the interests of a person in terms of ethical independence and exercise of the right to freedom of expression. The authorities' endeavour to restrict the right to freedom of expression and confine it to a narrower legal framework for ostensibly noble reasons should, in fact, be considered as attempts to reinforce the means of restricting critical opinions against the majority.

In reality, we face serious challenges in terms of restriction of the right to freedom of expression in all aspects. It is a trend in which all the branches of government join their efforts to restrict freedom of expression to the maximum extent and harness opinions critical of the government through tightening the regulatory framework, administrative practice and court judgments. It adversely affects the quality of democracy in the country.

Freedom of Expression

Under the first sentence of Article 17.1 of the Constitution of Georgia, "freedom of opinion and the expression of opinion shall be protected."

Freedom of expression is both the foundation and the objective of the democratic state based on the rule of law. It is the fundamental functional element, which serves as the basis for the development of the society, restriction of the arbitrariness on the part of the authorities and encouraging personal

development of an individual. Without the due exercise of this right, it is practically impossible to exercise other rights fully.[1]

Freedom of expression is considered as the cornerstone of a democratic state, a mechanism facilitating public discourse and formation of the marketplace of ideas. The higher the standard of respect for freedom of expression, the higher is the value of ethical independence of an individual.

Loyalty for the principles of constitutionality and democracy implies protection of the rights of an individual not only from the state but also from the predominant viewpoints, ethical boundaries of values and dominant trends in the society. In this regard, a judgment of the Constitutional Court of Georgia (hereinafter the "CCG") is noteworthy,[2] where the court accepted the standard established by the European Court of Human Rights (hereinafter the "ECtHR") in the case of *Handyside v. the United Kingdom:*

"Freedom of expression … is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no "democratic society."[3]

The Constitution of Georgia safeguards the right of receiving and disseminating information of any content in any form. The right to assembly and demonstration is a specific form of expressing an opinion and plays an instrumental role at the same time. [4] The state has both the negative obligation not to restrict a person's freedom of expression and the positive obligation not to allow unlawful interference with this right by third persons.

It should also be noted that the Constitution of Georgia establishes a higher standard for the protection of freedom of expression than the European Convention on Human Rights (hereinafter the "ECHR"). Unlike the Constitution of Georgia, the ECHR refers to public order as a legitimate aim based on which freedom of expression can be limited. The difference in the standards under the Constitution and the Convention in terms of freedom of expression is significant and it is manifested in other respects too, *inter alia*, the conflict between freedom of expression and the authority, independence and impartiality of the judiciary. The GDI team faced this legal dilemma in one of the cases. The question posed was whether the Constitution of Georgia safeguards the authority of the judiciary within a broader sense as it is safeguarded under the ECHR. We lodged a constitutional claim with the CCG. This case is

1 Judgment no. 1/3/421,422 of the CCG of 10 November 2009, para. 6.

2 Judgment no. 1/3/421,422 of the CCG of 10 November 2009.

3 Judgment no. 1/3/421,422 of the CCG of 10 November 2009.

4 Judgment no. 2/482,483,487,502 of the Constitutional Court of Georgia of 18 April 2011.

discussed below. Irrespective of the will declared by the authorities in the Constitution to uphold the high standards of freedom of expression, serious violations of freedom of expression on the part of the authorities remain problematic. Furthermore, the trend in the past few years is noteworthy which clearly shows the penchant of the authorities for restricting freedom of expression significantly at the regulatory level. The abundance of interferences on the part of the authorities with the right to assembly and demonstration is also noteworthy and can be considered as a direct indicator of worsening the quality of democracy. Deterioration of democracy is directly proportionate to interference with freedom of expression.

Unjustified Interference/Attempted Interference by the Authorities at the Legislative and Administrative Level

A particular important function of freedom of expression is to protect minority opinion. As already mentioned above, the constitutional standard for the protection of freedom of expression extends to, *inter alia*, offensive and/or shocking opinions unacceptable for the majority. However, in the Georgian reality, particularly in the resent years, the present government and representatives of the ruling party consistently voice opinions about introducing an even more restrictive regulatory framework. These discussions are mostly veiled under the pretext of protecting minority interests. However, these initiatives are mostly voiced by the groups in the majority (the ruling party and the Georgian Orthodox Church). Therefore, it gives rise to the feeling that the motivation behind making the regulatory framework stricter is to restrict critical opinions against the majority rather than to protect the minority. There government is eager to penalise or make stricter the regulations about defamation, offending religious feelings, or insulting in general.

In 2013, the authorities voiced one such initiative for the first time. With the initiative of the Government of Georgia, the Parliament of Georgia deliberated on introducing administrative responsibility for offending religious feelings. According to the government's initiative, the administrative responsibility, *inter alia*, was supposed to be imposed on

"a person who has, with his/her statements or actions, manifested hatred publicly against religious shrines, religious organisations, god's servants or believers, aimed at offending religious feelings of believers; or a persons' public manifestation showed religious hostility and hatred or publicly incited such an action."

This initiative caused a considerable public backlash[5] and it never materialised into a law.

[5] https://gdi.ge/ge/news/civil-society-organizations-call-on-the-parliament-of-georgia.page,(accessed 22.01.2020).

In 2015, with the initiative of the Ministry of Internal Affairs of Georgia, the parliament criminalised public call for violence. The original wording of the law was very broad and undermined the existing standard of freedom of expression considerably. The clear and present danger test was only incorporated, thanks to the efforts of the civil society, which brought the provision closer to the constitutional standards.[6]

In 2016, the Academy of Legal Science of Georgia requested the Parliament of Georgia to restore criminal responsibility for defamation and insult. The legislative proposal did not materialise into a law. The same year, a decision adopted on such issues by the Committee on Human Rights and Civic Integration of the Parliament of Georgia was rather alarming. With the first reading (agreeing in principle), the committee supported the initiative of an MP, one of the representatives of the ruling party, Ioseb Jatchvliani, to introduce administrative responsibility for offending religious feelings. Again, in this case, the backlash from the civil society was rather relentless and the draft law failed to materialise eventually.[7]

In this context, 2018-2019 was rather stressful. In 2018, this time a member of the Patriots' Alliance, MP Emzar Kvitsiani, requested the parliament to introduce criminal responsibility for offending religious feelings. This initiative too caused a serious backlash from the society. In this case, also the initiative did not materialise into a law. However, the position of principle taken by NGOs was important regarding the danger of realisation such initiatives.[8]

It is commendable that all those initiatives voiced over the years about making stricter the respective regulatory framework and criminalising certain acts stayed as initiatives. However, to this day, the topic keeps surfacing at different times, mostly by the authorities.

In this regard, the report points out the statements made by the President of Georgia, Salome Zourabichvili,[9] the President of the Parliament of Georgia, Giorgi Kobakhidze,[10] and the Patriarch of

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6 https://gdi.ge/ge/news/arasamtavrobo-da-media-organizaciebis-ertoblivi-gancxadeba-shuglis-gagvivebis-taobaze-inicirebul-kanonproeqttan-dakavshirebit.page;https://gdi.ge/ge/news/arasamtavrobo-da-media-organizaciebis-ertoblivi-gancxadeba-dzaladobrivi-qmedebisken-sadjarod-mowodebis-taobaze-inicirebul-kanonproeqttan-dakavshirebit.page, (accessed 22.01.2020).

7 https://gdi.ge/ge/news/samoqalaqo-platformis-ara-fobias-gancxadeba-religiuri-grdznobebis-sheuracxyofis-dasdjadobis-shesaxeb-kanonproeqtis-taobaze.page, (accessed 22.01.2020).

8 https://gdi.ge/ge/news/koalicia-tanasworobistvis-mouwodebs-parlaments-ar-daushvas-religiuri-grdznobebis-sheuracxyofis-kriminalizebis-kanonproeqtis-migeba.page, (accessed 22.01.2020).

9 https://www.radiotavisupleba.ge/a/29704741.html, (accessed 22.01.2020).

10 https://netgazeti.ge/news/333391/, (accessed 22.01.2020).

the Georgian Orthodox Church[11] about restricting freedom of expression under the pretext of fighting defamation and insult (in a broader sense).

The international consensus on the impermissibility of penalising religious feelings is noteworthy. In this context, General Comment no. 34 of the United Nations Human Rights Committee on International Covenant on Civil and Political Rights should be mentioned. It states in express terms that prohibition of display of lack of respect for a religion or other belief system, including blasphemy laws, is incompatible with the Covenant.[12]

The jurisprudence of the CCG also complies with international standards. In the case of *Giorgi Kipiani and Avtandil Ungiadze v. the Parliament of Georgia*, the court opined that *"the fact that a person does not share a position, values or ideas… cannot serve as the basis for the restriction of freedom of expression. The state has a duty to protect objectively identifiable interests but not subjective feelings."*[13] As regards substantive regulation of freedom of expression, the CCG is rigorously consistent and maintains that the call for violence must be real, more accurately; it must be creating *"clear, direct and substantial danger of bringing about an illegal result."*[14]

Stemming from the above-mentioned, it is clear that the authorities attempt, by resorting to various initiatives, to permanently narrow down the scope of freedom of expression. Such an approach gives rise to the feeling that the ostensibly noble reasons should be considered as attempts to reinforce the means of restricting critical opinions against the majority.

The Right to Assembly and Demonstration

Tent Protest

On 26 September 2018, in Tbilisi, in front of the parliament building, police violently interfered with the demonstration organised by Zaza Saralidze and Malkhaz Machalikashvili, exercising their right to peaceful assembly.[15]

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11 https://www.mediachecker.ge/ka/mediagaremo/article/64693-sazogadoebis-cilistsamebisgan-dacva-thu-gamokhatvis-thavisuflebis-shezghudvis-mcdeloba, (accessed 22.01.2020).

12 The United Nations Human Rights Committee, General Comment no. 34 U.N. Doc. CCPR/C/GC/34/CRP.2 (2010): 48.

13 Judgment no. 1/3/421,422 of the CCG of 10 November 2009, para. II.7.

14 Judgment no. 2/482,483,487,502 of the CCG of 18 April 2011, para. II.105. Also see: https://emc.org.ge/ka/products/emc-s-kritika-religiuri-grdznobebis-sheuratskhqofis-sakitkhze-ioseb-jachvlianis-sakanonmdeblo-initsiativaze, (accessed 22.01.2020).

15 http://rustavi2.ge/ka/news/114576, (accessed 22.01.2020).

The demonstrators were planning to set up a tent on the pavement, which would not obstruct/block the entrance of the building. However, police officers dismantled the tent and did not allow demonstrators to continue their protest in this form. Furthermore, according to news, police was using force against demonstrators, confiscating the tent and searching their vehicle.[16]The attempt of the police not to allow demonstrators to put up a tent at the place of assembly is an attempt to control the form of a peaceful assembly, which is a serious violation of freedom of assembly, safeguarded by the Constitution of Georgia and the Law of Georgia on Assemblies and Demonstrations. The Ministry of Internal Affairs of Georgia has a negative obligation not to interfere with the exercise of freedom of assembly in the form chosen that is peaceful and selected by demonstrators. Choosing the form, time and venue of a demonstration is a part of freedom of assembly as is its content and it might indeed constitute the content of freedom of expression itself.

Violent Disruption of the Demonstration of 20 June

On 20 June 2019, a deputy of the Russian State Duma, Sergei Gavrilov, who considers the Georgian territories, Abkhazia and South Ossetia, occupied by Russia to be independents states, presided over the Inter-parliamentary Assembly on Orthodoxy while sitting in the chair of the President of the Parliament of Georgia. This fact was followed by a strong wave of protest. A small part of the demonstration violated the public order and committed isolated violations. In response, the authorities resorted to large-scale and disproportionate force. Instead of preventing the isolated incidents of breach of law, the law-enforcement authorities deployed disproportionately large police force and with the use of clubs, rubber bullets and water cannons disrupted the peaceful assembly.

The subsequent events made it clear that the police did not follow the sequence or procedure for the use of special means. Despite the express requirement of the Georgian legislation, the respective authorities did not warn the demonstrators, in a manner understandable for them, to disperse and that force would be used against them if they did not. On some occasions, police officers were shooting rubber bullets from a short distance, aiming for the head and face, which increased the gravity of injuries. According to the authorities, the actions taken by them were within the law as some demonstrators barged into the Parliament of Georgia and attempted a coup d'état. However, it is noteworthy that the authorities failed to explain to the public in a credible manner why their actions were compatible with the constitutional standards when interfering with the right to assembly and demonstration based on this ground. Under the standard established by the CCG, the call for violent

[16] https://netgazeti.ge/news/306893/, (accessed 22.01.2020).

overthrow of the constitutional regime can be restricted if there is a clear, real and present danger of its realisation.[17]

According to the publicly available data, there are 275 victims as a result of the events of 20-21 June; there are 187 civilians, 38 journalists and 73 officers of the Ministry of Internal Affairs of Georgia among them. As a result of the use of disproportionate force by the law-enforcement authorities, 28 citizens needed surgical intervention and two civilians lost an eye. Investigative authorities have not conducted effective and impartial investigative actions in a timely manner into the incidents involving altercations between the demonstrators and law-enforcement officers. To date, the status of victim has been granted to 8 citizens only and 67 officers of the Ministry of Internal Affairs of Georgia.

On 20 June, the authorities failed to manage the tense situation, did not use all the recourses at its disposal for communication, negotiation and dialogue, did not comply with the statutory requirement regarding the use of force and its intensity by which they violated the constitutional rights of citizens assembled to hold a peaceful demonstration.

Furthermore, apart from the clear fact of the use of disproportionate force by the state on 20 June, the legality of the ground for the use of force to disrupt this particular demonstration in general is also open to debate. In this regard, it is important to assess to what extent the state took into consideration the clear and present danger test when interfering with freedom of expression. In particular, it is not clearly explained how realistic the threat posed by a small group's activity within the large-scale demonstration to the state and public safety was and whether the state had the possibility to avoid large-scale violation of freedom of expression by neutralising the threat posed by a small group.

Proportional Parliamentary Elections and Assembly/Demonstration

In response to the tragic events that unfolded on 20-21 June 2019, the chairman of the ruling political party, Georgian Dream, Bidzina Ivanishvili, made a public statement that, in 2020, parliamentary elections would be conducted based on the principle of proportional representation. However, despite this promise, on 14 November 2019, during the plenary session, the ruling political party voted down the constitutional amendment on the transition to proportional election system. The authorities' action gave rise to another wave of large-scale demonstrations. Among others, demonstrators resorted to non-violent forms of protest such as picketing the building of the Parliament of Georgia. This form of protest again witnessed the use of police force and special means against peaceful demonstrators. The special forces of the Ministry of Internal Affairs of Georgia disrupted the demonstrators twice with the use of water cannons (on 18 and 26 November 2019) and, on the third occasion (on 28 November), blocked

[17] Judgment no. 2/482,483,487,502 of the CCG of 18 April 2011.

all the ways leading to the parliament's entrances with metal barricades. It should be noted that cold water was used against the peaceful demonstrators in a freezing weather. This response of the authorities was considered to be in serious breach of international standards for disrupting an assembly and demonstration.

Under Article 9.3 of the Law of Georgia on Assemblies and Demonstrations, blocking the entrances of buildings, motorways and railways shall be prohibited when assemblies or demonstrations are held. However, this fact *per se* does not serve as the ground for restricting freedom of expression. Stemming from the constitutional standard, restriction of freedom of expression should be assessed in several aspects. The necessity of restriction of freedom of expression in a democratic society is, *inter alia,* particularly important. The assessment of the lawfulness of disrupting the demonstration on the area adjacent to the parliament, in the prism of this necessity, is especially significant. It is debatable whether it was necessary in a democratic society and whether it was aimed at securing a more weighty interest than the fundamental freedom of assembly.

It should also be borne in mind that the police unjustifiably restricted the rights of peaceful demonstrators even when the demonstration was held in front of the parliament, within the legal boundaries. The incidents involving the confiscation of firewood and other items brought to the demonstration for heating purposes are particularly alarming.[18] During the demonstration, the police arrested tens of individuals in administrative proceedings the majority of whom were later detained. Along with the obnoxious practice of administrative arrests, there were numerous violations in the manner in which the court hearings were conducted.[19] The proceedings of individuals arrested on 18 November are still pending.

The actions taken by the ruling party and the failure to transform the political promise into a legal reality were negatively assessed by the diplomatic corps and local and international organisations.[20]

The events unfolded on 31 December 2019 amounted to another clear example of the serious illegal interference with freedom of assembly and manifestation. Officials of the Municipal Department for Safety, without any legitimate ground, without any legal authority, removed the tents set up in protest by Malkhaz Machalikahsvili and the family of Giorgi Mamaladze in front of the parliament and, instead, arranged a shark-themed inflatable bouncy castle usually used in spring time; after it deflated, on the next day, another mini theme-park was arranged. The police, that protected the illegal actions of the city hall, arrested 10 demonstrators in illegal administrative proceedings.[21] GDI represented the

[18] http://bit.ly/2E2egTq, (accessed 22.01.2020).

[19] https://gdi.ge/ge/news/statement-21-11-2019.page, (accessed 22.01.2020).

[20] http://bit.ly/2P5Wyo8; http://bit.ly/2LDXiyK, (accessed 22.01.2020).

[21] https://www.radiotavisupleba.ge/a/30353967.html, (accessed 22.01.2020).

majority of the arrested individuals before the Tbilisi City Court. These concrete cases are discussed below, in more detail.

Freedom of the Media

The Case of Ajaria Broadcaster

On 19 April 2019, the board of advisors of Ajara TV dismissed the TV Company's director, Natia Kapanadze.[22] NGOs called upon the board even before the finalisation of the dismissal procedure to scrutinise the issue and assess the damage that the dismissal of the director could entail.[23]

Georgian civil society assessed this issue as the authorities' attempt to impose political power over the independent media outlet.

Applications for the director's position were called for at four different times. However, the board was unable to select a candidate in three of the selection processes and the fourth attempt was suspended by the Batumi City Court. The acting director, Natia Zoidze, accused the board of political games, whereas the television itself, according to its journalists, faced the risk of changes in its editorial policy due to the events following the removal of the director, especially the decision adopted by the Batumi City Court.[24] Eventually, Giorgi Kokhreidze was appointed the director of the company. He plans to reorganise the company and has announced that the company's news programmes are biased. Journalists blame him of interfering with editorial activities.[25]

On 23 December 2019, the new director of the TV Company changed the contract of his deputy, Natia Zoidze, and curtailed her functions to a considerable degree. According to the new contract, Natia Zoidze is now left with the function to "draft reports".[26]

It is noteworthy that under Natia Kapanadze's management the television company was considered as a free, impartial and expanding institution. Accordingly, it is highly likely that the failure of the authorities to control the company and its expansion served as the motive for changing its director. The later events clearly confirmed this assumption. Under the new management, numerous steps were taken towards the centralisation of the company's management and paving the road for adopting

[22] https://batumelebi.netgazeti.ge/news/196942/, (accessed 22.01.2020).

[23] https://gdi.ge/ge/news/acharis-televizia.page, (accessed 22.01.2020).

[24] http://bit.ly/2LSnPJ5, (accessed 22.01.2020).

[25] http://bit.ly/36koDy1, (accessed 22.01.2020).

[26] https://batumelebi.netgazeti.ge/news/246257/, (accessed 22.01.2020).

unanimous decisions regarding the editorial policy of the company. There is express indignation voiced by the present journalists of the TV Company regarding interferences by the new management with independent editorial decisions.

The Case of Rustavi 2

On 18 July 2019, the European Court of Human Rights announced its judgment in the case of Rustavi 2. The European Court did not find violations on the issues raised in the application. This judgment also revoked the ground for suspending the enforcement of the final domestic judgment. Despite the fact that there was a possibility of referring this case to the Grand Chamber of the European Court, the Public Registry granted Kibar Khalvashi's application regarding changing the owner of Rustavi 2 on the same day.[27] At the same time, the NGOs negatively assessed the staff changes made by the new owner of the company.[28]

It is noteworthy that attacks on the Rustavi 2 Broadcasting Company Ltd commenced back in 2014. The unfolded events were numerously appraised as an attack by the ruling party on independent media. There were numerous questions regarding the decisions adopted by domestic courts. Eventually, the ECtHR did not find violations and stated that there had been no violation of the right to a fair trial of the media company and its owners. However, it should be noted that the judgment of the Strasbourg Court did not concern the examination of possible violation of freedom of expression/freedom of media.

Criminal Persecution of Managers of Independent and Critical Media

The prosecutor's office instituted criminal prosecution against two of the owners of the TV Company the Main Channel, Giorgi Rurua[29] and Nika Gvaramia[30] who is also the company's General Director; criminal prosecution was also instituted against Avtandil Tsereteli, father of the owner of TV Pirveli – Vakhtang Tsereteli.[31] Furthermore, Zurab Gumbaridze, the General Director of another independent media outlet critical of the government was summoned for questioning before the prosecutor's office numerous times.[32] Systemic criminal prosecution of the managers of TV Companies and a selective

[27] https://1tv.ge/news/sajaro-reestrma-qibar-khalvashs-rustavi-2-dauregistrira, (accessed 22.01.2020).

[28] https://gdi.ge/ge/news/arasamtavrobo-organizaciebis-gancxadeba-rustavi-2-ze-mimdinare-sakadro-cvlilebebisshesaxeb.page, (accessed 22.01.2020).

[29] Under the charges of illegal storage of and carrying firearms (Article 236.3 and Article 236.4 of the Criminal Code of Georgia).

[30] The failure to comply with a court judgment (Article 381.1 of the Criminal Code of Georgia).

[31] Conspiring to legalise illegal proceeds committed in group, accompanied by receipt of particularly large proceeds (Articles 25-194.2.a) and Articles 25-194.3.c) of the Criminal Code of Georgia).

[32] https://www.radiotavisupleba.ge/a/30108196.html, (accessed 22.01.2020).

policy against TV Companies gives rise to the feeling that the ruling party desires to establish its political influence over media and suppress views critical of the authorities.

Media space is an informative platform within which the public should enjoy access to critically analysed information and be able to be involved in public discourse; to follow the process of formation of marketplace of ideas. If the policies implemented by the state authorities against media outlets (and their management) are based on narrow political interests and the desire to expand their areas of influence and suppress different opinions and opinions critical of government, this will eventually affect the quality of democracy in the country.

Collection Order on the Media

On 26 December 2019, by a decision of the Ministry of Finance, a collection order was levied on the accounts of Rustavi 2, TV Pirveli, TV Kavkasia and several regional media outlets. According to the circulated information, the Ministry of Finance ordered the media companies to pay the outstanding budget debt within a day. It should be noted that the TV companies had been paying budget taxes in good faith. However, their refusal to pay taxes out of principle until the state stopped its unequal tax policy towards them and pro-government media caused the accumulation of the budget debt. In particular, their protest was caused by the state's lenient tax policy towards, *inter alia*, Imedi TV. It is noteworthy that Imedi TV owes an outstanding debt worth millions to the budget. The above media outlets requested equal treatment from the state, as they had to face an unjustified competitive environment otherwise. Despite these circumstances, the Ministry of Finance took a categorical position, rejected the request of the media outlets on debt redistribution and applied the strictest measure against them, viz., debt collection.

This action of the Ministry of Finance was severely criticised by the representatives of the TV companies and the civil society. As already noted above, for years, Imedi TV and Maestro TV have had considerable outstanding debts worth millions to the budget.[33]

Such an approach of the Ministry of Finance gives rise to the valid suspicion that the state follows the principle of selective justice and treats more favourably the television companies affiliated with the authorities. Pursuing selective policies in the media space indicates the motivation of the state to restrict any opinion critical of the government, which negatively affects freedom of expression as safeguarded by the Constitution and, in general, the quality of democracy in the country.

[33] http://tv25.ge/news.php?lang=ge&id=18818, (accessed 22.01.2020).

Case no. 1 of TV Kavkasia Ltd

According to a decision of the Georgian National Communications Commission (GNCC), by a report on an administrative offence, TV Kavkasia Ltd, together with other broadcasters was found to be in breach of the rule of covering pre-election debate (Article 51.2 of the Election Code of Georgia).

Under Article 55.2 of the Law of Georgia on Broadcasting, a general broadcaster, as well as the Public Broadcaster, during electoral campaigns taking place within its service area shall ensure the equal participation of all qualified candidates in election debates without any discrimination. The same rule is laid down by Article 51.2 of the Election Code of Georgia. The commission alleged that TV Kavkasia had breached this rule as not all qualified candidates for election participated in the election debates.

The director of TV Kavkasia, Nino Jangirashvili, represented by GDI, argued during the oral hearing of the administrative offence that candidates did not appear on their programme due to their own decision. The TV Company had contacted all the candidates and invited them to its programme, however, some of them declined to participate.

The Section of Administrative Cases of the Tbilisi City Court examined the commission's report about the violation of the rule of debates by TV Kavkasia and found the violation of Article 51 of the Election Code. It, however, exempted the company from a penalty.

GDI appealed before the Tbilisi Court of Appeals and argued that the TV Kavkasia had not planned or broadcast pre-election debates in the impugned period (the first round of the pre-election campaign) or afterwards. This was confirmed by a representative of the commission as well at the hearing and the commission did not adduce any evidence to contradict this fact. This is further confirmed by the monitoring conclusion of the commission itself. In other words, in the impugned period, at least two election candidates (presidential candidates) were not on the programme aired by TV Kavkasia together and they have not had any debates with each other. Moreover, discrimination is a purposeful and deliberate action and the voluntary refusal of election candidates to participate in a TV programme cannot be perceived as amounting to discrimination on the part of the TV Company. However, the court did not agree with these arguments and upheld the first instance court's decision.

Case no. 2 of TV Kavkasia Ltd

The Georgian National Communications Commission, based on its decision no. 668/18 of 6 December 2018, without imposing an administrative responsibility on TV Kavkasia Ltd, found it in violation of Article 70.1 and Article 63.2 of the Law of Georgia on Broadcasting.

The GNCC observed that, since 23 November 2018, TV Kavkasia Ltd had been airing a political/pre-election advertisement that contradicted the legislation in force. In particular, it was a political/pre-election campaign of a presidential candidate, Salome Zourabichvili, which was contradicting the advertisement of

another presidential candidate, Grigol Vashadze. The GNCC maintained that this advertisement, where the opposing candidate was referred to as "pathological", "godless" and "treacherous" was unethical and contradicted the legislation in force.

TV Kavkasia Ltd, represented by GDI, applied to the Tbilisi City Court. The TV Company argued that the GNCC had committed a substantive violation of the Georgian legislation when applying it. In particular, the commission ignored the fact that the Law on Advertisement does not apply to political advertisement as stipulated by this law itself in clear and unequivocal terms. Furthermore, even if the Law on Advertisement applied to the given case, the report was still illegal since the advertisement was fully within the scope of freedom of expression as it warranted the protection of the highest standard of freedom of expression as a political expression. On 16 January 2020, Justice Nana Aptsiauri of the Tbilisi City Court rejected our claim and upheld the commission's order.

Violent Groups as a Weapon of the Authorities Against Minorities

Tbilisi Pride

On 14 June 2019, representatives of the LGBTQ+ community and their supporters held a demonstration in front of the Chancellery of the Government. The reason for holding the demonstration was the failure of the authorities (the Ministry of Internal Affairs of Georgia) to give guarantees for holding the Tbilisi Pride in safe environment. Furthermore, the Patriarchy of Georgia made a statement calling upon the authorities not to allow the representatives of the LGBTQ+ community to hold the pride event.

At the chancellery, the demonstrators were met by aggressive and violent groups voicing threats towards them, calling upon violence and chanting anti-Western messages. Because of this situation, the peaceful demonstrators had to be escorted away in buses from the area by police. The Ministry of Internal Affairs of Georgia arrested 28 persons involved in the incident.[34] On 16 June 2019, violent groups gathered in the Vera Garden. According to the statements made by Levan Vasadze, one of the leaders of the group, they would set up so-called People's Squads and resort to the methods of immediate physical violence and would not allow the LGBTQ+ community to hold the pride event; and had the law-enforcement authorities attempted to protect organisers of the Tbilisi Pride, they would not hold back and would try to suppress this resistance using wooden clubs.[35] The Ministry of Internal Affairs of Georgia instituted investigation regarding this statement however, no tangible results have been achieved to this day. Despite the hostile environment, against the background of violent counter-demonstrations and

[34] https://civil.ge/ka/archives/308548, (accessed 22.01.2020).

[35] https://on.ge/, (accessed 22.01.2020).

maximum indifference of the law-enforcement authorities, it can be said that the pride event was held on 8 July 2018.[36]

Thus, on 14 June, LGBTQ+ activists could not exercise their rights in front of the building of the chancellery. They and other peaceful citizens, who gathered there, journalists and representatives of the Public Defender, were subjected to threats and violence in the absence of the authorities' adequate follow-up response. It should also be borne in mind that for the past few years such counterdemonstrations have become a regular feature and the majority of them are non-peaceful and violent. For instance, a counterdemonstration was held after a peaceful demonstration in May 2018, following the Basiani special operation. Counterdemonstrations were promptly organised also after the Shame Demonstration in July 2019 and with regard to screening of the film And Then We Danced in November 2019, etc.[37]

These groups make public threats, evince aggression and tend to commit violent actions against some groups of the society (for instance, migrants, representatives of LGBTQ+ community, club-going youths, etc.). However, the state only reacts insufficiently to their actions. Empowerment of such groups and an increase in the number of intimidations and disruption of peaceful demonstrators are caused by the inert attitude showed by the state and absence of any policies in this regard. Therefore, the misgivings about the collaboration between such groups and the authorities become stronger. The continuation of this trend can give rise to the emergence of new hot spots of conflict and escalation of the situation.

Screening of the Film And Then We Danced

On 8 November 2019, Tbilisi movie theatres screened the film And Then We Danced about the life of a young gay couple. However, before the film's debut and during its screening, violent groups held demonstrations in front of the movie theatres threatening not to allow its screening, disrupt the premiere and block the movie theatres. The situation was particularly tense in Tbilisi, in front of the movie theatre Amirani, where violent demonstrators periodically pushed at the police cordon and tried to go through it. There were concrete incidents of resorting to violence too. For instance, a demonstrator threw a hard object at Ana Subeliani, a civic activist, and inflicted a serious injury on her head. Furthermore, politician David Berdzenishvili also became a victim of aggression. He was escorted by the police from the movie theatre instead of neutralising the violent demonstrators. During the

[36] https://www.radiotavisupleba.ge/a/%E1%83%A6%E1%83%98%E1%83%A0%E1%83%A1%E1%83%94%E1%83%91%E1%83%98%E1%83%A1-%E1%83%9B%E1%83%90%E1%83%A0%E1%83%A8%E1%83%98-%E1%83%A8%E1%83%94%E1%83%93%E1%83%92%E1%83%90/30044249.html, (accessed 22.01.2020).

[37] http://www.tabula.ge/ge/story/132700-qsenofobiuri-ultranacionalisturi-jgufebi-rustavelis-gamzirze-aqciasmartaven,(accessed 22.01.2020).

demonstration, the violent groups constantly made homophobic and aggressive chants filled with threats towards those entering the movie theatre to watch the movie. [38]

The fact that the authorities ignored the statements made by the violent groups' leaders before the premiere should be negatively assessed. They threatened publicly and called upon their supporters to disrupt the screening of the film. The ineffective response of the law-enforcement authorities to certain violations and breaches is noteworthy. It shows once again the selective approach by the authorities and possible connections with the violent groups. The state takes unnecessarily severe legal measures against the groups critical of the government and at the same time treats these violent groups leniently.[39]

Freedom of Expression and the Authority of the Judiciary

The Case of Fady Asly

Fady Asly called a judge, who imposed a considerable fine on the companies belonging to the members of the International Chamber of Commerce, "corrupt". His statement reads as follows:

"Justice Vladimer Kakabadze is a corrupt judge. He adopted the decision as a result of corrupt dealings; the judge grossly deceived and blackmailed the companies."

Judge Vladimer Kakabadze initiated civil proceedings at the Tbilisi City Court, claiming defamation and demanding compensation of damages. It is noteworthy that Vladimer Kakabadze is employed by the same court. Before the start of the proceedings, the Tbilisi City Court responded publicly to the statement of Fady Asly. The court's statement opened as follows:

"The judiciary strongly condemns and deems it impermissible to allow spreading information tarnishing the dignity and professional reputation of a judge."[40]

The Tbilisi City Court's statement virtually referred to the information as already established facts. Despite the absence of a minimum standard of impartiality, Vladimer Kakabadze's claim was examined and upheld by the Tbilisi City Court and Fady Asly was ordered to pay 3,000 GEL. The judgment was upheld by the Tbilisi Court of Appeals.

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38 https://gdi.ge/ge/news/ara-fobias-gamoxmaureba-2019-wlis-8-noembers-ganvitarebul-movlenebtandakavshirebit.page,(accessed 22.01.2020).

39 https://gdi.ge/ge/news/ara-fobias-gamoxmaureba-2019-wlis-8-noembers-ganvitarebul-movlenebtandakavshirebit.page,(accessed 22.01.2020).

40 https://www.interpressnews.ge/ka/article/424688-tbilisis-sakalako-sasamartlo-padi-aslis-pasuxobs, (accessed 22.01.2020).

On 16 April 2019, the Supreme Court by its decision no. AS-591-591-2018 revoked the judgment of the Tbilisi Court of Appeals and opined that Fady Asly's statement amounted to a value judgment protected in absolute terms within the scope of freedom of expression. According to the reasoning of the Supreme Court:

"The disseminated information should be deemed as a value judgment that is protected in absolute terms and therefore the person imparting it should be exempted fully and unconditionally from any responsibility. The information disseminated by the respondent even if it is harshly criticising should be considered as contributing to public discourse."

It should also be mentioned that Justice Vladimer Kakabadze, who does not deem it appropriate for a judge, as a public official, to tolerate critical and offending statements and does not consider them to be value judgments protected in absolute terms, was elected a judge of the Supreme Court by the Parliament of Georgia.

Strategic Litigation

Strategic Litigation before the Constitutional Court of Georgia

The Case of AIISA

On 24 April 2019, Ani Gachechiladze the founder of a Georgian company producing condoms under the brand name AIISA, represented by GDI, lodged a constitutional claim with the CCG. We argued the failure of several provisions to comply with the Constitution. In particular, we believe that the definition of "unethical" advertisement under Article 3.5 of the Law of Georgia on Advertisement and imposition of responsibility for the dissemination of an unethical advertisement under Article 156 of the Code of Administrative Offences of Georgia contradict freedom of expression and freedom of artistic expression safeguarded by the Constitution and fail to comply with the constitutional requirement on foreseeability.

On 4 May 2018, the judgment – rendered by Justice Lasha Tavartkiladze of the Tbilisi City Court and the judgment on 15 May 2018 rendered by Justice Levan Murusidze of the Tbilisi Court of Appeals in the case of the Tbilisi City Hall v. AIISA – found that the following imagery on the condom packaging by AIISA was unethical (violation of the dissemination of advertisement/dissemination of unethical advertisement) and offended religious feelings of a particular group and national dignity: King Tamar with an inscription – Game of Thrones in Tamar; the text – Astounding Victory; a left palm (the court considered this was the Blessing Right Hand by which the clergymen of the Orthodox Church depict cross); and the photo of a panda with a text – Would Have a Wank but it's Epiphany.

AIISA's owner Ani Gachechiladze was accountable for the violation and fined for GEL 500. The court also ordered her to withdraw the advertisement with all four designs (images and inscriptions) as well as the advertised product already in distribution from the market of Georgia and prohibited her to disseminate this advertisement further.

We believe that courts of general jurisdiction negated constitutional standards and adopted judgments arbitrarily, based on wrong interpretation of the applicable provisions and the ECtHR case-law. The court ruled that individual freedom of expression should be limited because of the perceptions and opinions of the majority or a particular group about religion and morals. Therefore, we believe that this judgment directly contradicts the Constitution of Georgia and modern democratic principles.

In terms of constitutionality, we believe that the impugned provision establishes essentially non-neutral restriction of freedom of expression. Similarly, it is impermissible to restrict freedom of expression because of such subjective notions as morals and ethics or religious feelings. Moreover, the Constitution of Georgia does not refer to public morals as a legitimate aim for restricting freedom of expression, unlike the ECHR.

The Constitutionality of Criminalisation of Desecration of the National Flag or the Coat of Arms of Georgia

In the constitutional claim filed with the CCG by AIISA, GDI also challenged Article 343 of the Criminal Code of Georgia, which criminalises desecration of the state's coat of arms and the national flag.

Under Article 343 of the Criminal Code of Georgia, *"desecration of the state's coat of arms or national flag shall be punished by house arrest for a term of six months up to two years or imprisonment up to two years."*

We believe that the impugned provision fails to meet the quality of the law. In particular, it is not clear what is implied under the "flag". Is it only the fabric that is implied therein or, among others, is it also a printed image or computer generated imagery? Furthermore, the meaning of "desecration" is also unclear. The claimant argues that it is impermissible to prohibit such actions and thus restrict freedom of expression as democracy implies encouraging individuals to be bold and daring when it comes to opposing unjust policies of the authorities and, in certain occasion, to resort to effective forms of expression such as burning their national flag.

It is significant that restriction of freedom of expression by such a regulation is also problematic in terms of compliance with legitimate aims. The impugned provision does not refer to a legitimate aim the protection of which it might be seeking. The impugned provision presumably seeks to protect state security and public safety as legitimate aims. However, such a legitimate aim should be considered in the light of the clear and

present danger test. In the case of *Brandenburg v. Ohio,* the US Supreme Court opined, *"freedoms of speech and press do not permit a State to forbid advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action."* It is noteworthy that the CCG shares the clear and present danger test introduced by the US Supreme Court. The CCG has discussed this issue in the case of *Zviad Dzidziguri and Kakha Kukava v. the Parliament of Georgia*.[41]

In this case too, an act of desecrating the flag or the coat of arms can be restricted only in those cases where there is a clear and present danger of this act resulting in a grave outcome. The impugned provision does not incorporate the clear and present danger test and it provides for the blanket restriction of all acts involving desecration of the flag or the coat of arms. Therefore, it should be considered as a blanket restriction of freedom of expression without any legitimate aim.

In this regard, the US experience and the jurisprudence of the US Supreme Court are noteworthy.

The criminalisation of desecrating state symbols has a long-standing legal history in the US. Starting from the 20th century to this day, there are about 40 decisions concerning desecrating the flag.[42]

On 14 June 1777, the Continental Congress approved the design of a national flag. However, the flag had not been a popular symbol for Americans before the Civil War. During the Civil War era, however, the American flag was increasingly politicised and became a symbol of the battle between the South and the North. After the Confederate flag was in the past, the new flag of the US became the symbol of victory over racism and evil and the symbol of liberty and its popularity increased. Politicians embraced it and started using it actively. The flag was placed at the centre of political campaigns and it gave the national flag another dimension.[43]

In 1897, the states started enacting flag desecration laws. By the end of 19th century, an organised movement emerged in the US that advocated banning the use of the flag of the United States for commercial and political spheres. The movement failed to convince the US Congress to pass a federal law. However, Illinoi, Pennsylvania and South Dakota became the first states to enact flag desecration laws. By the time of 1932, all states had such laws.[44] Thus, the enactment of the laws prohibiting the

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41 Judgment no. 2/482,483,487,502 of the Constitutional Court of Georgia of 18 April 2011 in the case of *Citizen's Political Association "Movement for Unified Georgia", Citizen's Political Association "the Conservative Party of Georgia", Citizens of Georgia Zviad Dzidziguri and Kakha Kukava, Georgian Young Lawyers' Association, Citizens Dachi Tsaguria and Jaba Jishkariani, the Public Defender of Georgia v. the Parliament of Georgia,* II.-91.

42 Rosenblat Albert M., Flag Desecration Statutes: History and Analysis, p. 193.

43 Welch Michael, Flag Burning, Moral Panic and the Criminalization of Protests, the Civil War Era and the Emerging Significance of the Flag, p. 21.

44 http://www.ushistory.org/betsy/more/desecration.htm, (accessed 22.01.2020).

desecration of the national flag was related to the post-Civil War period because of the preferences of white Southerners for the Confederate flag, and again by the tendency of businesses to use the American flag as a standard advertising logo.[45]

It is noteworthy that the US Supreme Court consistently held that laws prohibiting flag desecration were unconstitutional.

In *Halter v. Nebraska*, the U.S. Supreme Court found that, even though the flag is a federal symbol, states have the right to create and enforce local laws.[46] Halter was selling bottled beer that contained labels depicting the United States flag. Halter did not motion the court for a revision of the Nebraska legislation in terms of its compliance with the First Amendment.[47]

Flag desecration laws were adopted in the US at the beginning of the 20th century. However, the policies against flag burning or desecration became stricter in the 70s when the US Congress passed the Federal Flag Desecration Law in 1968 in response to a Central Park event in which peace activists burned American flags in protest of the Vietnam War.

The US Supreme Court held in the case *of Street v. New York* that it was unconstitutional to punish a person for burning the American flag and publicly speaking defiant or contemptuous words about it. In 1974, the US Supreme Court held in the case of *Smith v. Goguen* that the Massachusetts's legislation contradicted the US Constitution, as it was impermissible to hold a person responsible for wearing a small United States flag sewn to the seat of his trousers. Goguen wore a pair of jeans, which had a small United States flag sewn into it. In upholding Goguen's "void for vagueness" contentions, the court concluded that the words "treats contemptuously" did not provide a "readily ascertainable standard of guilt".[48]

The US Supreme Court ruled in *Spence v. Washington* that affixing peace sign stickers to a flag is a form of constitutionally protected speech and it was impermissible to hold the person responsible for such an act. Spence was entitled to such a form of protest. It was the first case where the court ruled that interfering with the physical integrity of a privately owned flag was within the contours of the First Amendment.[49]

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45 https://www.thoughtco.com/united-states-flag-burning-laws-history-721207, (accessed 22.01.2020).

46 *Halter v. Nebraska* (205 U.S. 34).

47 Rosenblat, Albert M., Flag Desecration Statutes: History and Analysis, p. 202.

48 *Smith v. Goguen* (415 U.S. 94).

49 *Spence v. Washington* (418 U.S. 405).

The most important case related to desecrating the national flag is *Texas v. Johnson, where the US Supreme Court stated* that flag desecration is a constitutionally protected form of free speech under the First Amendment to the Constitution of the United States and it could be limited only if it posed a clear and present danger. Justice William J. Brennan from his 1989 majority opinion in *Texas v. Johnson stated that* "We can imagine no more appropriate response to burning a flag than waving one's own… We do not consecrate the flag by punishing its desecration, for in doing so we dilute the freedom that this cherished emblem represents."[50]

Thus, there was a specific historical context of introducing responsibility for desecrating state symbols in the US that was related to the situation and challenges of those times. Nevertheless, the US Supreme Court, despite these challenges, has not justified the restriction in any of the cases it deliberated upon. Conversely, there is no such concrete need in a modern democratic society, including Georgia that would justify the necessity of preserving such provisions. Even if there was such a necessity, the impugned provisions disproportionately restrict freedom of expression, *inter alia*, due to the absence of a legitimate aim and foreseeability as well as the blanket nature of the regulation.

It is noteworthy that the CCG, on 24 October 2019, admitted the constitutional claim lodged in the case of AIISA for the consideration of the merits (also under the head of criminalisation of desecrating the state flag and the coat of arms).

The Case of Zviad Kuprava

On 1 August 2019, Justice Elene Goguadze of the Tbilisi City Court found Zviad Kuprava guilty of contempt of court for insulting a judge.

Article 366 of the Criminal Code of Georgia criminalises contempt of court. The first paragraph of the provision criminalises contempt of court for insulting a participant of court proceedings, which is punishable by a fine or community work from 180 to 240 hours or deprivation of liberty up to 1 year. The second paragraph is a qualified provision and criminalises contempt of court for insulting a member of the Constitutional Court, a judge or a juror; it lays down a fine or community work from 1 to 2 years or imprisonment up to two years.

In the Tbilisi City Court, administrative proceedings were conducted against Zviad Kuprava regarding an administrative offence allegedly committed by him. During the proceedings, the judge announced a one-hour break during which Zviad Kuprava went to the court's cafeteria. During the break, representatives of the Ministry of Internal Affairs of Georgia approached Zviad Kuprava, demanded him to leave the cafeteria and return to the courtroom. In response, Zviad Kuprava said that he would

[50] https://www.thoughtco.com/united-states-flag-burning-laws-history-721207, (accessed 22.01.2020).

be back on time. The representatives of the Ministry of Internal Affairs of Georgia continued requesting him and told him that the judge was waiting for him. To this Kuprava responded that he did not care about the judge (namely, "He could not be arsed about the judge"). These factual circumstances were considered as contempt of court manifested in insulting a judge.

On behalf of Zviad Kuprava, GDI lodged a constitutional claim with the CCG and requested for the declaration of the relevant normative connotation of Article 336 of the Criminal Code of Georgia as unconstitutional. We believe that the provision does not comply with the constitutional requirement of foreseeability, on the one hand and infringes freedom of expression, on the other hand.

The CCG, by its decision of 5 July 2019, admitted Zviad Kuprava's constitutional claim for the consideration of the merits. The hearings on the merits were completed and the court is presently deliberating on the judgment.

This is a landmark case in terms of the scope of freedom of expression and its relation with the scope of the independence and impartiality of the judiciary. The CCG has not adjudicated on this issue before.

Article 17.5 of the Constitution of Georgia refers to the "independence and impartiality of the judiciary" as grounds for the restriction of freedom of expression. However, the fact that the constitutional standard of freedom of expression also applies to voicing opinions about a judge and the judiciary is evident from the case-law of the CCG, according to which: *"expressing a person's attitude towards the judiciary [...] is an individual's constitutional right."*[51] *"Expressing an opinion regarding judicial activities is a constitutional right [...] there could be a public interest underlying criticism of a judge's performance and discussing his/her professional or personal characteristics."*[52]

The above wording of the Constitution of Georgia in exhaustive and unambiguous terms refers to those interests which can warrant restriction of freedom of expression. Any restriction in terms of protecting the judiciary, a specific judge or the process of administration of justice must be aimed at maintaining 1) the independence and 2) the impartiality of the judiciary.

In the above case, the CCG maintained that it is justifiable "for ensuring normal functioning of an institution[53] to introduce certain regulations. The CCG maintains that the legitimate aim of restricting such an expression is to ensure the unhindered functioning of the judiciary, its protection from undue

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51 Judgment no. 2/482,483,487,502 of the Constitutional Court of Georgia of 18 April 2011 in the case of *Citizen's Political Association "Movement for Unified Georgia", Citizen's Political Association "the Conservative Party of Georgia", Citizens of Georgia Zviad Dzidziguri and Kakha Kukava, Georgian Young Lawyers' Association, Citizens Dachi Tsaguria and Jaba Jishkariani, the Public Defender of Georgia v. the Parliament of Georgia,* II.-68.

52 *Ibid.,* para. 69.

53 *Ibid.,* para. 59.

influence and maintaining impartiality. *"The right to express an opinion, hold an assembly (demonstration) is guaranteed unless the exercise of this right prevents from unhampered functioning of the court."*[54]

The judgment of the CCG adopted in the case of *Onise Mebonia and Vakhtang Masurashvili v. the Parliament of Georgia* is significant for the purposes of this research; namely the following are noteworthy: the court's remarks about the interpretation of the impugned provision and its legitimate aim, on the one hand and on the other hand, assessment of the impartiality and authority of the judiciary, effective justice, reputation and dignity of a judge, etc.

"In the opinion of the Constitutional Court of Georgia, despite states' lack of consensus regarding the prevention of contempt of court, in any case, the major aspect emphasised by democratic states is that achieving and maintaining the fundamental aim of the authority of the judiciary and effective justice should not be sought at the expense of infringement of fundamental rights of an individual."[55]

The CCG also maintains, *"the impugned provisions aim at facilitating comprehensive and effective administration of justice, ensuring holding court hearings, which eventually serves the aim of maintaining the authority of the judiciary."*

In the court's view, *"this aim is identical to any other aim of preventing insult of any other subject and naturally, it should be decisive when contempt of court is against the person of a judge, his/her reputation and dignity. Certainly, in these cases also the presumption of impartiality of a judge stands as the judge represents the court when administering justice and, therefore, has no right to be subjective and adopt a wrong and unjust decision. This, in the first place, is imperative for the authority of the judge and for the judiciary in general."*

In the light of the above-mentioned, it would be wrong to assert that "a judge will be necessarily biased in all cases covered by the impugned provisions. It cannot be asserted even when contempt of court is against a judge's person. While there is a presumption in favour of a judge's impartiality, in some cases he/she might not be partial. However, in any case, it depends not on the impugned provision but on the judge him/herself and his/her attitude towards the judicial position and the judiciary in general and, therefore, his/her ability not to be influenced by subjective, personal factors when administering judicial powers. In those circumstances that can give rise to misgivings about a judge's (court's) impartiality, the judge is obliged to transfer the case to another judge."

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[54] *Ibid.,* paras. 60-61.

[55] Judgment no. 1/3/393,397 of the Constitutional Court of Georgia of 15 December 2006, in the case of *Onise Mebonia and Vakhtang Masurashvili v. the Parliament of Georgia*, II-11.

In the same case, the CCG shared Irish experience and opined that *"contempt of court is not an offence against the reputation and dignity of a judge; it hampers proper administration of justice. The authority to assess such an act and impose a sanction is considered to be a part of functioning of a rule of law state and an integral part of a judge's authority. This ensures effective and adequate administration of justice."*

In the light of these very arguments, we believe that the normative connotation of Article 366 of the Criminal Code of Georgia criminalising making an insulting remark towards a judge outside of a courtroom, even during pending criminal proceedings, is not constitutional. Furthermore, the Constitution of Georgia, unlike the ECHR, protects not the authority of the judiciary in broader sense but only the impartiality and independence of the court, which in turn serves maintaining the authority of the judiciary only within this prism. Accordingly, the Constitution considers relevant, not offensive, remarks against a judge and his/her dignity *per se*, which is a part of the authority of the judiciary in a broader sense, but only such expressions that hamper the administration of justice.

The Approach Taken by the US Supreme Court

The standard for freedom of expression established by the CCG is similar to the US model, which is characterised by a free speech-oriented approach and in some cases offers a higher standard of protection than the European model. Accordingly, in order to present the issue in clearer terms, we deem it appropriate to review the jurisprudence of the US Supreme Court. According to the US Supreme Court, freedom of expression under the First Amendment to the US Constitution extends to the criticism of the judiciary as an institution, judges and their judgments as a form of political speech and enjoys the highest degree of legal protection.[56] According to the US Supreme Court, judges as persons, or courts, as institutions, are entitled to no greater immunity from criticism than other persons or institutions.[57] In the case of *Pennekamp v. Florida*, the court opined, "criticism must not feel cramped, even criticism of the administration of criminal justice and weak characters ought not to be judges." In the case of *Craig v. Harney*, the court used self-criticising phraseology and observed that "… the law of contempt is not made for the protection of judges who may be sensitive to the winds of public opinion." However, despite such a broad scope, the court does not afford absolute protection to this aspect of freedom of expression. According to the jurisprudence, criticism of concluded proceedings "however unrestrained" would always be constitutionally protected; however, "restrictions on speech concerning pending judicial proceedings are likely to impede discussion of

[56] Freedom of Speech and Permissible Degree of Criticism of Judges: In the Jurisdiction of the European Court of Human Rights and the US Courts, David Kosar, 2007, Budapest, Hungary.

[57] *Bridges v. California*, 314 US 252 (1941).

important public issues, at the precise time when public interest in the matters discussed would naturally be at its height."[58]

The Approach Taken by the ECtHR

Unlike the Georgian and American standards, the European Convention and the European Court have a stricter approach. It is noteworthy that the stricter approach by the ECHR and the ECtHR can also be caused by discrepancies in the texts of the respective instruments. As already mentioned, the Constitution of Georgia refers to the "protection of the independence and impartiality of a judge". Whereas under Article 10 of the Convention, the exercise of freedom of expression may be subject to restrictions for "maintaining the authority and impartiality of the judiciary". Unlike the constitution of Georgia, the Convention mentions in express terms the authority of the judiciary. This could be the reason for a broader interpretation of the notion of the authority of the judiciary by the European Court.

Criticism of the judiciary and maintaining the authority of the branch administering justice are multifaceted notions. Therefore, the ECtHR scrutinises the provisions of several articles of the European Convention when examining the merits in such cases. Considering the limits and the purpose of the present research, it only discusses the case-law on one article only, viz., Article 10 of the Convention.

Firstly, it is important to explain what is implied by the ECtHR in the judicial machinery in general. Within the broader sense, the term implies public prosecutors that are civil servants tasked to contribute to the proper administration of justice[59] as well as clerks and judges.[60]

At the first stage of developing its case-law, the ECtHR justified the restriction of freedom of expression due to the inability of the judiciary to respond. For instance, in the case of *Prager and Oberschlick v. Austria*, the Court stated, "[r]egard must … be had to the special role of the judiciary in society. As the guarantor of justice, a fundamental value in a law-governed State, it must enjoy public confidence if it is to be successful in carrying out its duties. It may therefore prove necessary to protect such confidence against destructive attacks that are essentially unfounded, especially in view of the fact that judges who have been criticised are subject to a duty of discretion that precludes them from replying."[61]

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[58] *Bridges v. California*, 314 US 252 (1941); *Pennekamp v. Florida*, 328 U.S. 331 (1946).

[59] *Lesnik v. Slovakia*, ECtHR judgment of 11 March 2003, para. 54.

[60] *Prince v. the United Kingdom,* decision of the European Commission of Human Rights (Plenary) of 13 March 1986.

[61] *Prager and Oberschlick v. Austria*, ECtHR judgment of 26 April 1995, para. 34.

The ECtHR discussed in the cases of *Morice* and *Peruzzi* the scope of admissible criticism and the protection afforded to judges in this context. The limits of acceptable criticism in some circumstances may be wider with regard to judges acting in their official capacity than to ordinary citizens.[62] "However, it cannot be said that civil servants knowingly lay themselves open to close scrutiny of their every word and deed to the extent to which politicians do and should therefore be treated on an equal footing with the latter when it comes to criticism of their actions."[63]

Another important aspect emphasised by the ECtHR is aimed at the recipient and the objective of the expression. In the *Barfod* case, the ECtHR based its decision on the line between the reasoning of a judgment and a personal attack: "The impugned statement was not a criticism of the reasoning in the judgment …, but rather, …, a defamatory accusation against the lay judges personally, which was likely to lower them in public esteem and was put forward without any supporting evidence."[64] A relatively clearer line was drawn by the ECtHR between criticism and personal attack in the *Skalka* case: "A clear distinction must … be made between criticism and insult. If the sole intent of any form of expression is to insult a court, or members of that court, an appropriate punishment would not, in principle, constitute a violation of Article 10 § 2 of the Convention."[65]

The different approach taken by the ECtHR when assessing critical comments made with regard to the reasoning of a judgment and a judge adopting it is shown by the Court in the case of *Peruzzi*. According to the ECtHR, criticising a judge for "taking unfair and arbitrary decisions" was within freedom of expression safeguarded by Article 10 of the Convention, as it amounts to a value judgment with a sufficient factual basis and according to the Court's case-law the truth of such opinions is not susceptible of proof. The Court maintained that the same cannot be said, when it comes to the second criticism, that the judge was "biased" and "wilfully made mistakes, by malicious intent, serious misconduct or negligence".[66] An even broader list as to what can be implied as a personal insult is construed by the ECtHR in the case of *Radobuljac*. In this case, the applicant's critical comments were aimed at the manner in which the judge was conducting the proceedings and were strictly limited to the judge's performance in his client's case, and distinct from criticism focusing on his general qualities, professional or otherwise. The applicant's remarks could not be compared to those which the Court or the former Commission found to be amounting to personal insult such as wilfully deciding to distort

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62 *Morice v. France,* ECtHR (GC) judgment of 23 April 2015, para. 131.

63 *Peruzzi v. Italy*, ECtHR judgment of 30 June 2015, para. 52.

64 *Barfod v. Denmark*, ECtHR judgment of 22 February 1989, para. 35.

65 *Skalka v. Poland*, ECtHR judgment of 27 May 2003, para. 34.

66 *Peruzzi v. Italy*, ECtHR judgment of 30 June 2015, paras. 57-59.

reality, unhesitatingly lying or, furthermore, issuing an untruthful report containing false and malicious information.

Furthermore, it is a personal attack on a judge and is beyond the scope of Article 10 to doubt the professional competence of the judge examining the merits of a case. The same applies to the use of phrases such as "irresponsible clowns", "a limited individual", and "an outstanding cretin".[67]

Hooliganism in Online Public Space

Justice Natia Merabishvili of the Tbilisi City Court, by her decision of 25 September 2019, found that a student of Tbilisi State University, Buba Natchkebia, committed minor hooliganism (Article 166 of the Code of Administrative Offences of Georgia) for his offensive expression towards a lecturer of the same university and imposed a verbal reproach on him. The case concerns posting an offensive comment about the lecturer by a student in a closed group (where up to 3,000 present and former students are members) on Facebook.

Justice Natia Merabishvili of the Tbilisi City Court rightly pointed out that social networks fall in the public domain. However, her comments regarding the duty to respect moral and ethical norms in social media are noteworthy. Unless this duty is fulfilled, the expression amounts to the breach of public peace and order.

We believe that such legal definitions are also relevant in the cases of minor hooliganism, when the breach of public order takes place not online but in an actual public space. However, the decision of Justice Lasha Tavatkiladze of the Tbilisi City Court, dated 9 December 2019, in the same case is also noteworthy. Justice Lasha Tavartkiladze revoked the first-instance court's judgment and discontinued administrative proceedings against Buba Natchkebia. Justice Tavartkiladze pointed out the quality of foreseeability of Article 166 of the Code of Administrative Offences and stated:

"A law must meet the formal requirement of legal certainty to enable citizens to foresee to a reasonable extent the possible result of a particular action. It is not necessary for the result to be foreseeable with absolute certainty. However, stemming from the principle of legal security, which is a significant foundation of a law-governed state, the principle of legal certainty assumes particular importance as it reinforces the safeguard of foreseeability of legislation. Therefore, the chamber maintains that a legal provision must enable a person to foresee a legal outcome in certain circumstances. This requirement is not met by Article 166 of the Code of Administrative Offences of Georgia. In those circumstances where there are no substantive legal regulations regarding obscenity, it is impermissible to subject freedom of expression of the person before the court with regard to the legal interest safeguarded by the provision at

[67] *Radobuljac v. Croatia*, ECtHR judgment of 28 June 2016.

stake; the provision imposing legal responsibility does not lay down responsibility for disseminating critical statements or obscene comments via social network."

It should be pointed out that the problem related to the foreseeability of Article 166 of the Code of Administrative Offences is relevant not only with regard to insults expressed in social network but also in the context of minor hooliganism in actual public space. However, the judge's above reasoning is rather progressive and significant from several legal standpoints. According to the court, Article 166 of the Code of Administrative Offences does not concern obscenity; it is aimed at preventing breach of public order and peace through such expression. Furthermore, it is noteworthy that a judge of general jurisdiction practically discussed the issue of constitutionality of a legal provision. This further confirms that Article 166 of the Code of Administrative Offences needs to be assessed regarding its constitutionality in terms of offensive expression that takes place online.

GDI prepared a constitutional claim requesting the declaration of the unconstitutionality of the normative connation of Article 166 of the Code of Administrative Offences, according to which offensive online expressions amount to minor hooliganism. We believe that, on the one hand, the provision does not meet the constitutional requirement of foreseeability and, on the other hand, it violates the constitutional freedom of expression. In this regard, the standard of regulation of offensive expression is significant. The Law of Georgia on Freedom of Speech and Expression, which practically repeats the standards of free speech established in the US, deems it justified to introduce substantive regulation in cases of direct insult.[68] As regards the scope of regulation of Article 166 of the Code of Administrative Offences, obscenity and insult are regulated not to protect the rights of others – reputation and dignity – but to protect the public order.

As regards offensive expressions in public space, it poses the danger of upsetting this very order, *inter alia*, by aiming at conflict that follows insult. We also believe that this is the rationale behind the Constitution of Georgia when safeguarding freedom of expression and setting constitutional boundaries for its restriction, which is unfeasible in case of online offensive expression.

Strategic Litigation Before the ECtHR

The Case of AIISA

As already mentioned above, the judgment rendered on 4 May 2018 by a judge of the Tbilisi City Court – Justice Lasha Tavartkiladze – and, the judgment rendered by a judge of the Tbilisi Court – Justice Levan Murusidze – on 15 May 2018 in the case of the Tbilisi City Hall v. AIISA ruled that the following imagery on the condom packaging by a Georgian company producing condoms under the brand name

[68] The Law of Georgia on Freedom of Speech and Expression, Article 9.1.c), Legislative Herald of Georgia, no. 220, SSM, 19, 15/07/2004.

"AIISA" was unethical (the violation of the rule of dissemination of advertisement/dissemination of unethical advertisement) and offended religious feelings of a particular group and national dignity: King Tamar with an inscription – Game of Thrones in Tamar; the text – Astounding Victory; a left palm (the court considered this was the Blessing Right Hand by which the clergymen of the Orthodox Church depict cross; and the photo of a panda with a text – Would Have a Wank but it's Epiphany.

In this case, GDI lodged an application with the ECtHR on 13 December 2018. GDI alleged that the state violated freedom of expression guaranteed by Article 10 of the Convention. The judgment of the European Court in this case will be significant not only in terms of the standard of freedom of expression but also with regard to determining the standard for protecting social and commercial expression.

It is noteworthy that, unlike the Constitution of Georgia, Article 10.2 of the Convention refers to morals as a legitimate aim based on which freedom of expression can be restricted. However, the existence of such an aim *per se* does not justify the restriction of freedom of expression. When assessing lawfulness of interference with freedom of expression, the ECtHR applies the three-tier test. However, the ECtHR also pays additional attention to the aim of expression. If a person's sole aim is to attack a particular individual or a group of individuals, offend their religious feelings and does not contribute to a debate in public interest, such an expression will not enjoy protection under Article 10 of the Convention as it was held in the case of *E.S. v. Austria.*

When discussing the interrelation of freedom of expression and religious feelings, the ECtHR, during its long-standing practice, maintains that it is the general requirement in a pluralist, tolerant and democratic society to ensure the peaceful enjoyment of the rights guaranteed under Article 9. However, in a pluralist democratic society, those who choose to exercise the freedom to manifest their religion cannot reasonably expect to be exempt from all criticism; they must tolerate and accept the denial by others of their religious beliefs and even the propagation by others of doctrines hostile to their faith.

The case of *Sekmadienis v. Lithuania* concerned striking a fair balance between freedom of expression and religious feelings, where the ECtHR observed that it had no reason to doubt that numerous individuals must have been genuinely offended. However, the Court reiterated that freedom of expression also extends to ideas, which offend, shock or disturb.

Out of the cases mentioned above, the case of *Sekmadienis v. Lithuania* is particularly noteworthy. In this case, the ECtHR found that the applicant company's advertisement amounted to commercial expression. Similar to the case of AIISA, this case too concerned striking a fair balance between freedom of expression, on the one hand and the public moral and religious feelings, on the other hand. The ECtHR stated clearly that domestic courts had to explain clearly which moral norms were violated and

why the reference to religious symbols in the advertisements was offensive. In the opinion of the ECtHR, the statements made by domestic courts were declarative and vague. The Court further observed that the advertisements had had a purely commercial purpose and had not been intended to contribute to any public debate concerning religion or religious symbols. It should be also noted that apart from a commercial connotation, the visual imagery on AIISA's packaging in some cases concerned taboo and sacred issues of the society and was aimed at facilitating public debate about them.

It should also be pointed out that the arguments and terminology submitted by Lithuania are almost identical to our case. The ECtHR found the arguments of the respondent state to be vague when it asserted that inappropriate use of religious symbols "is contrary to universally accepted moral and ethical norms". Similar to this case, the domestic court in our case also refers to universally accepted moral and ethical norms. Considering that the impugned advertisement was not aimed at criticising the opinions of a particular religious groups, the ECtHR found the violation of Article 10 of the Convention.

The ECtHR started communication in this case on 22 January 2019. At this stage, the case is at the stage where it is possible to settle it by a friendly settlement. In case a friendly settlement cannot be reached, the European Court communicated the following questions to the parties:

Has there been an interference with the applicant's freedom of expression within the meaning of Article 10 § 1 of the Convention?

If so, was that interference justified in terms of Article 10 § 2 (see, among other authorities, *Sekmadienis Ltd. v. Lithuania*, no. 69317/14, §§ 70-74, 30 January 2018)?

Strategic Litigation Before Courts of General Jurisdiction

Obnoxious Practice of the Administrative Arrests of Demonstrators and Practical Shortcomings of the Examination of These Cases by Domestic Courts

It has been years since the Code of Administrative Offences adopted by the Presidium of the Higher Council of the Soviet Socialist Republic of Georgia in 1984 has been unable to respond to modern challenges. The consensus about the shortcomings of the code and the fact that its application poses risks in terms of unjustified restriction of human rights has been reached long ago both in the academia and civil society. However, it is because of this outdated document, which is incompatible with the modern human rights standards, persons critical of the authorities cannot exercise the rights fully during assemblies and demonstrations.

When arresting citizens, the law-enforcement authorities formally refer to the motive of preventing an administrative offence and/or ensuring state order and public order. However, in the resent period, the trend of arresting civil activists clearly showed that the law is applied not for securing the objectives enshrined therein but to suppress critical opinions and to be used as a weapon to this end. Such an approach has a chilling effect on those individuals who wish to protest but refrain themselves from voicing their opinions for the fear of possible repercussions. Accordingly, the practical application of the code is in fact aimed at restricting freedom of expression.

In the course of 2018, GDI represented 11 demonstrators arrested in administrative proceedings and appeared before the Tbilisi City Court.

Demonstration of 18 November

After the events of 20-21 June 2019, protest processions and demonstrations were actively organised on the central streets of Tbilisi and in various regions of Georgia by persons supporting the government and those against the authorities.

The law-enforcement authorities displayed an inconsistent and selective approach to these events in a number of cases. Arresting demonstrators on 18 November 2019 near the Parliament of Georgia and sentencing them to jail was one of such cases. One judge – Justice Valerian Pilishvili – examined the cases of all 37 individuals arrested.

GDI represented three persons in the administrative proceedings before the Tbilisi City Court: Giorgi Maqarashvili, Irakli Katcharava and Zurab Berdzenishvili. In all the three cases, the administrative agency alleged in its reports on administrative offences that the persons above breached public order by swearing and not complying with the numerous warnings of the police officers for which actions they were arrested on 19 November 2918. Identical administrative reports were drawn on the commission of offences under Article 166 and Article 173 of the Code of Administrative Offences.

Several significant negative trends were identified in the court proceedings, in particular:

The judge did not grant our motion for affording reasonable time to prepare our position and adduce evidence. Instead, the judge decided to examine the cases in one day because of which the cases had to be joined. However, it was still impossible to ensure that all persons appeared before the court within statutory timeframes.

It should also be noted that the judge took into account only the identical statements given by police officers and did not pay any attention to the arguments adduced by the other party about the importance and content of the right to assembly as *lex specialis* of freedom of expression and the risks associated with unjustified restriction of freedom of expression.

In his decision of 21 November 2019, Justice Valerian Pilishvili found that Irakli Katcharava, Giorgi Maqarashvili and Zurab Berdzenishvili and other persons had not committed administrative offences under Article 166 of the Code of Administrative Offences of Georgia. However, the judge held that these persons disobeyed the legal requests of police officers. Accordingly, the court deemed it proportional to impose administrative detention for the accused; Giorgi Maqarashvili was detained for 12 days; Irakli Katcharava – 4 days and Zurab Berdzenishvili for 7 days.

In the decision adopted the same day, Justice Valerian Pilishvili corrected the inaccuracies made in the above decisions regarding the terms of administrative detention. In particular, the terms of administrative detention with regard to Zurab Berdzenishvili, Irakli Katcharava and Giorgi Maqarashvili had to commence from the time indicated in the reports upon arrest and two days instead of one day had to count against the term of detention to be served.

Demonstration of 12 December

GDI represented three individuals (Alika Kuprava, Davit Kakauridze and Levan Gakheladze) before the Tbilisi City Court, arrested on 12 December 2019 near the Parliament of Georgia for offences under Article 166 and Article 173 of the Code of Administrative Offence of Georgia.

There were two reports with identical content in the case files, according to which Davit Kakauridze and Alika Kuprava violated public order on the area adjacent to the Parliament of Georgia by uttering filthy and vulgar words and swearing; they attempted to block the entrance to the building of the parliament and did not comply with the police officers' legal requests.

In this case, Justice Natia Merabishvili of the Tbilisi City Court granted the motion of the defence for affording reasonable time and adjourned the hearing to enable the defence to prepare its position and adduce evidence. However, eventually, unlike the case of persons arrested during the demonstration of 18 November, the judge imposed fines in the amount of GEL 2,000 and GEL 1,500 on Alika Kuprava and Davit Kakauridze respectively and Levan Gakheladze was acquitted of the charges and administrative proceedings were discontinued due to the absence of evidence.

Arrests Made on 31 December

GDI represented before the Tbilisi City Court 6 persons arrested near the Parliament of Georgia on 31 December 2019: Nodar Rukhadze, Zurab Berdzenishvili, Zurab Mzhavanadze, Levan Burduli, Giorgi Mumladze and Beqa Kokaia. The police alleged the violation of Article 166 and Article 173 of the Code of Administrative Offence of Georgia.

Similar to the previous cases, the content of administrative reports drawn in these cases were also identical. Despite the fact that the events of 30-31 December were live broadcast by several media outlets and it was clear that the arrested persons had not been swearing or uttering vulgar words, the police officers who drafted the reports insisted that it was necessary to arrest the persons concerned in order to safeguard public order and due to their failure to comply with the police officers' legal requests.

It is noteworthy that the video recording adduced before the court by the police representatives does not show the incident of violation. Moreover, the video recording adduced in the case against Nodar Rukhadze was recorded after his arrest and therefore it did not show any violations committed by him.

On 22 January 2020, Justice Ivane Aghniashvili of the Tbilisi City Court acquitted Giorgi Mumladze, Beqa Kokaia, Lasha Burduli and Zurab Berdzenishvili from administrative charges and discontinued administrative proceedings against them. The judge found Zurab Mzhavanadze in violation of minor hooliganisms only and imposed verbal reprimand on him as an administrative penalty.

On 23 January 2020, Justice Natia Merabishvili of the Tbilisi City Court fully acquitted Nodar Rukhadze from administrative charges and discontinued administrative proceedings against him.

Standards and Shortcomings of Judicial Examination of Administrative Offences Under Articles 166 and 173 of the Code of Administrative Offences

Presumption in Favour of a Police Officer's Statement and Burden of Proof

Distribution of burden of proof between the administrative agency that issued a report under Article 166 and Article 173 of the Code of Administrative Offences and the person charged with an administrative offence is of the most important problems in such cases.

The Code of Administrative Offences does not stipulate anything about distribution of burden of proof. Furthermore, when an action is brought concerning the legality of a penalty bill imposed for an administrative offence, the provisions of the Code of Administrative Procedure of Georgia apply, including those about distribution of burden of proof. The fact that the Code of Administrative Offences does not govern distribution of burden of proof certainly does not mean that the court reviewing the legality of a report on administrative offence does not employ the concept of distribution of burden of proof. However, it gives rise to the question about the standards, legislative acts or a legal concepts based upon which courts distribute burden of proof. How do those clauses emerge in court decisions, according to which the statements given by police officers are afforded more credibility and are presumed to be authentic whereas persons charged with an administrative offence are required to prove the contrary? These decisions might not refer to legal grounds of distribution of burden of proof at all. However, we believe that this issue is decided based on Article

5.1 of the General Administrative Code of Georgia which is interpreted so that the court establishes the presumption of good governance, on the one hand and, on the another hand, shifts the burden to prove the opposite on the other party (a person charged with an administrative offence).

It is important to discuss how such an interpretation of the impugned provision is applied in practice when a court adjudicates about an administrative offence and adopts decisions regarding persons charged with an administrative offence.

In the above decisions, Justice Valerian Pilishvili of the Tbilisi City Court makes this very connection and provides the following reasoning:

"The court believes that in the proceedings particular importance should be attached to statements adduced by persons preventing violations since they are particularly informative and constitute the crucial source of evidence in the case. This group of eyewitnesses are particularly attentive which is caused by professional activities, and awareness of their public and civic duties. Receiving information from this group of eyewitnesses is related to performing their professional duties. They discharge their professional duties by paying purposeful attention to certain circumstances, actions, objects and individuals. The high quality of perception of these eyewitnesses and the comprehensiveness of a statement are caused by the fact that these officers know in advance the signs of the events and the situation to be observed in general. The scope of facts and circumstances regarding which they give statements are preconditioned by the subject of proof and the latter is mostly preconditioned by corpus delicti of the violation. Officials preventing a violation always give data that are directly related to the case concerned; they contain information about the facts to be examined by the court and meet the requirements about admissibility of evidence. Stemming from the above-mentioned, high credibility is attached to the statements given by a public official which is crucial for the formation of the judge's opinion. Under Article 5.1 of the General Administrative Code, an administrative body may not carry out an activity that contradicts the requirements of the law. This forms a presumption that governance is discharged in good faith and it is on the other party (a person charged with an administrative offence) to prove otherwise."

As regards the statements given by a person charged with an administrative offence, this cannot be considered as a piece of credible evidence unless it is corroborated by other evidence. In this context, negative assessment of an act leads to imposition of administrative responsibility. Therefore, statements, given by those persons against whom administrative proceedings are conducted, mostly cannot have high probative value as they are directly interested in the outcome of the proceedings and their statements can be motivated to conceal the violation, to avert responsibility, etc. Accordingly, statements made by such persons must always be assessed jointly with other pieces of evidence collected in the case."

The wording of Article 5.1 of the General Administrative Code that an administrative body may not carry out an activity that contradicts the requirements of the law determines one of the principles of administrative law, which is the principle of legality.

According to the academic commentaries to the General Administrative Code of Georgia, the principle of legality prohibits administrative bodies to circumvent the law, on the one hand and, on the other hand, it obliges them to apply the law. Administrative bodies have no right to resort to measures that conflict with the law. Neglecting the principle of the rule of law results in measures that are in conflict with the lawfulness of the acts of governance.[69]

In terms of the function of governance, the principle of legality requires revoking an illegal individual administrative legal act in order to restore legality.[70]

The principle of legality reinforced by the impugned provision is a general principle of administrative law. Accordingly, irrespective of whether other components of administrative law incorporate the principle of legality, it still applies as a general principle. The principle of legality has the same application in relation to administrative offences as well. Under Article 2 of the Code of Administrative Offences, *"the legislation of Georgia on administrative offences consists of this Code of Administrative Offences and other legislative acts of Georgia."* Accordingly, when examining an administrative offence in the court, the Code of Administrative Offences and other relevant legislation, including the principles under the General Administrative Code of Georgia, apply.

Apart from theoretical reasoning, the court practice shows that, when examining and adjudicating upon administrative offences, the courts apply the principles under the General Administrative Code. However, it is another matter how rightly and relevantly, among others, in terms of the Constitution, this principle is applied by the court in the cases involving administrative offences. This is the gist of the constitutional claim lodged by GDI with the Constitutional Court.

As already mentioned, in the decision adopted above, Justice Valerian Pilishvili of the Tbilisi City Court applies the impugned provisions and interprets it as follows:

"Under Article 5.1 of the General Administrative Code, an administrative body may not carry out an activity that contradicts the requirements of the law. This forms a presumption that governance is discharged in good faith and it is on the other party (a person charged with an administrative offence) to prove otherwise."

[69] P. Turava, N. Tskepladze, A Handbook on General Administrative Code, Tbilisi 2010, p. 29.

[70] K. Uriadmkopeli, The Significance of Legitimate Expectation and Related Terminology, Law Journal, Tbilisi, 2012, p. 69.

The judicial interpretation of the principle of legality in the impugned provision goes beyond the actual rationale of this principle and gives it a broader connotation. However, it does not mean that it only concerns the deficient interpretation given in court practice. The impugned provision is established and applied within the meaning discussed above. The connotation that the court gave to the impugned provision has been applied for years by the courts of general jurisdiction and has been grossly violating the constitutional right to a fair trial. Two aspects are noteworthy in the court's interpretation of the impugned provision:

> According to the court, an administrative body may not carry out an activity that contradicts the requirements of the law. This forms a presumption that governance is discharged in good faith;
>
> The presumption that governance is discharged in good faith shifts the burden of proof to the other party in adversarial proceedings.

On the one hand, courts of general jurisdiction assert that officials preventing a violation (police officers) follow the law and legal order and discharge their professional duty and they are not motivated by any reasons other than to ensure the legal order. Therefore, information, explanations and statements given by these officials are given greater credibility by courts of general jurisdiction and the court is satisfied in advance in their admissibility and authenticity. On the other hand, the statements/explanations adduced before the court by a person charged with an administrative offence appears suspicious to the court in advance and unless it is corroborated by other evidence it cannot have the required probative value.

The application of the impugned provision within this meaning places a person charged with an administrative offence in an unequal position right from the start of administrative proceedings and grossly violates his/her right to adversarial proceedings and the right to equality of arms as well as the principle of impermissibility of shifting the burden of proof an accused person and the principle of *dubio pro reo* safeguarded by the constitution.

In this regard, it is significant to discuss the history of how this interpretation at stake originated.

In particular, decision no. BS-626-596(K-07) of the Supreme Court of Georgia, dated 25 December 2007, is noteworthy.

Before going into the details of the case, it should be mentioned that the Code of Administrative Offences of Georgia determines two mechanisms of responding to violations. Article 239 of the Code of Administrative Offences refers to those violations in case of commission and identification of which a competent authority draws a report on an administrative offence. Under Article 241, the report is immediately sent to the body (official) which is competent to examine the case involving the

administrative offence. Accordingly, in the cases referred to in Article 239, drawing the report does not have an immediate legal effect; the report needs to be confirmed/reviewed by the court.

At the same time, Article 242 of the Code of Administrative Offences refers to those violations which do not involve drawing a report on an administrative offence; instead a penalty bill is drawn which itself is a report on an administrative offence with an immediate effect. These penalty bills constitute individual administrative legal acts and they are subject to judicial review when a person concerned brings an administrative action before the court.

This was the case before the Supreme Court of Georgia in the context of the above-mentioned decision of 25 December 2007. The claimant brought an administrative action before the court regarding the legality of a penalty bill imposed for the violation of the rule on crossing at the red light. The claimant, on whom administrative penalty had been imposed, argued that the lower courts distributed burden of proof wrongly; the courts had placed the burden of proof not on the defendant (administrative body) but on the person charged with the administrative offence (claimant) thus applying the general standard of burden of proof. The claimant also argued that such an approach by the courts of general jurisdiction gave rise to the high risk of arbitrariness on the part of police officers as they could in any case, irrespective of an administrative offence, impose a penalty bill and persons charged with administrative offences would never be able to prove the opposite.

The analysis of the decision adopted by the Supreme Court of Georgia on 25 December 2007 will shed the light on the rationale given by the courts of general jurisdiction of Georgia to shifting the burden of proof in adversarial proceedings on a person charged with an administrative offence based on the presumption in favour of governance discharged in good faith.

Article 17 of the Administrative Procedure Code of Georgia determines general principles of burden of proof. Under Article 17.1, *"a claimant shall be obliged to support his/her/its claim and to present appropriate evidence. A defendant shall be obliged to present a written response (statement of defence) and appropriate evidence."* Article 17.2 determines a special case of burden of proof and reads as follows: *"Unless otherwise provided for by the law, in the case of filing an action to declare an administrative act null and void, annul an act, or invalidate an act, the burden of proof shall rest with the administrative body issuing the act."*

In the above case, the claimant challenged the fact that, in the administrative proceedings, the burden of proof in the case involving the validity of the fine imposed by a patrol officer on the person concerned, the court had placed the burden of proof not on the defendant (administrative body) but on the person charged with the administrative offence (claimant) thus applying the general standard of burden of proof (Article 17.1 of the Administrative Procedure Code). Therefore, the latter had to prove that there had been no administrative offence committed.

The Chamber of Administrative Cases of the Supreme Court of Georgia, presided by Justice Natia Tskepladze (judge rapporteur), ruled that the lower courts rightly shifted the burden of proof to the person charged with an administrative offence. The court examined the merits of the case and it pointed out that the decision about the distribution of burden of proof would have implications for further development of the jurisprudence.

Firstly, the court interpreted the interrelation between the General Administrative Code and the Code of Administrative Offences. According to the court:

"A legal act issued in accordance with Chapter IV of the General Administrative Code must comply with the procedure established by the same code for administrative proceedings. The code determines the administrative procedure and the Code of Administrative Offences determines a specific type of administrative procedure in relation to administrative penalties. Therefore, in terms of substantive law, the legislature establishes a different procedure in the Code of Administrative Offences and the General Administrative Code depending on the specificity of governance function. The Court of Cassations maintains that, according to the legal doctrine, each procedural legislation reflects and takes into account the concepts of the respective substantive law, its principles and its rationale. Through administrative justice a person exercises his/her right to apply to the court and the latter examines the legality of administration."

Thus, the court stated that, depending on the specificity of governance function, the Code of Administrative Offences is a separate branch of administrative law. As regards the concepts of substantive administrative law, they also apply during the examination of the cases involving administrative offences as within other branches of administrative law. Therefore, the court, with these reasoning, created a foundation for the application of concepts (the principle of legality, burden of proof) of the General Administrative Code of Georgia in the examination of administrative offences.

The court carried on explaining the application of the concepts of the General Administrative Code of Georgia in the examination of administrative offences:

"The Court of Cassation believes that the principle of shifting burden of proof to the administrative body as established by article 17.2 of the Code of Administrative Procedure should not apply to the case before it. In the present case, the legality of issuing the penalty bill is not the gist of the dispute that needs to be adjudicated upon. The claimant did not challenge the competence of the administrative body (an official) or the legality of the application of legal provisions, respect for administrative legal principles in administrative proceedings, etc. Instead, the claimant challenges the fact of the commission of an administrative offence during which distribution of burden of proof on the parties must be proportionate.

The Court of Cassation maintains that the legal premise established by Article 17.2 of the Administrative Procedure Code should be understood so that, when examining the legality of administrative penalty, the administrative bodies having imposed the penalty must prove before the court the legality of this act as, under Article 5.1 of the General Administrative Code, an administrative body may not carry out an activity that contradicts the requirements of the law. This implies the duty of an administrative body (an official) and legal responsibility regarding the legality of the act. Therefore, Article 17.2 of the Administrative Procedure Code exempts the claimant from the duty to prove the legality of the act and obliges the respondent administrative body to prove that it had ensured that the act was issued based on the law and in accordance with it.

The Court of Cassation believes that, under Article 17.2 of the 2 of the Administrative Procedure Code, the administrative body is obliged to argue the legal aspect of the impugned act since, in accordance with the substantive legislation, it has the duty not to carry out an activity that contradicts the requirements of the law. Therefore, it is completely reasonable to shift the burden of proof on the administrative body.

In the case before the court, the legality of the impugned act is examined not from the perspective of legal grounds (factual basis of the claim) but in terms of wrongful establishment of the fact and wrong application of the provision as a result of its assessment.

The Court of Cassation maintains that, in conditions where determination of legality of the impugned act depends on establishing that the fact as described and revealed by the act actually took place, it is reasonable that the general rule under Article 17.2 of the 2 of the Administrative Procedure Code on the proportionality of the distribution of burden of proof and the duty to adduce evidence should apply. This rule has been applied by the Court of Appeals when adopting the decision concerned."

Apart from the fact that the Court of Cassation applied the general rule under the General Administrative Code when examining the case involving an administrative offence, the court read the rationale of the distribution of burden of proof in Article 5.1 of the General Administrative Code. Furthermore, within the scope of the same article, the court maintained that, considering the principle of legality and the principle of legitimate expectation, there is a presumption in favour of a statement given by a police officer that acts in good faith as the latter might not have significant professional skills and might not have any interest in the recipient of the report unless such interest is proved.

The Supreme Court of Georgia refers to this decision in its decision of 2013 when the wrong distribution of burden of proof by courts of general jurisdiction, presumption in favour of good governance and police officers' statements had become a large-scale problem. The Supreme Court

attempted in this decision to change the approaches taken by the courts of general jurisdiction and, despite the fact that we are not a country based on the common law system, the Supreme Court endeavoured to steer the courts' jurisprudence in the right direction.

In this decision, the Supreme Court gives the following opinions regarding the arguments in favour of presumption in favour of good governance and police officers' statements:

"According to the information at the hands of the Court of Cassation, unfortunately, the courts of general jurisdiction has followed this approach multiple times and therefore there is a risk it will be followed again. It therefore requires taking preventive (i.e. appropriate) measures so that lower courts apply the conclusions of the Supreme Court adequately and in a qualified manner, should they agree with these findings. Lower courts are in serious violation of the fundamental principles of impartiality and equality of arms of the administrative and civil procedural law."[71]

Therefore, it is a fact that, within the judiciary, at the level of the Supreme Court, there is the right vision and readiness to consider these cases duly. The claims according to which the Code of Administrative Offences adopted in 1984 cannot be interpreted otherwise have no legitimacy. Instead, in fact, judges of the courts of general jurisdiction have the opportunity to interpret these provisions properly; however, this will probably be more feasible if there is a political will to this end.

Freedom of Expression and the Authority of the Judiciary

The Case of Zviad Kuprava

Based on the circumstances described above in relation to the case of Zviad Kuprava, he was charged under Article 366.2 of the Criminal Code of Georgia, criminalising contempt of court, which was manifested in insulting the judge. Justice Lasha Tavartkiladze, who learned about the issue after the fact, stated that, apart from insulting him, it also amounted to insulting the entire institution.

GDI represents Zviad Kuprava in the above criminal case before the courts of general jurisdiction. We motioned unsuccessfully before Justice Elene Goguadze of the Tbilisi City Court for suspending proceedings and filing a constitutional submission with the CCG.

Despite our weighty argument, Justice Elene Goguadze of the Tbilisi City Court did not agree with the defence and on 1 August 2019 found Zviad Kuprava guilty as charged and sentenced him to imprisonment for 9 months. The court stated that it was allowed to restrict freedom of expression for

[71] Judgment no. BS-544-535(K-12) of the Supreme Court of Georgia of 2 April 2013.

maintaining the authority of the judiciary and the phrases voiced in a court building indeed amounted to contempt of court manifested in insulting a judge.

With the judgment of 9 September 2019, Justice Mzia Lomtatitze of the Tbilisi Court of Appeals upheld the judgment of the Tbilisi City Court based on the same reasoning.

We appealed the judgment of the Tbilisi Court of Appeals before the Court of Cassation and proceedings are pending to this day.

Restriction of Freedom of Expression in Online Public Space by the State

The Case of Tamaz Sozashvili

Tamaz Sozashvili posted his opinion on the official Facebook page of the President of the Committee of Human Rights and Civic Integration of the Parliament of Georgia, Sopio Kiladze. As a result, he was blocked on the page and his function to comment on it was turned off. He learned about the aforementioned on 9 June 2018.

Tamaz Sozashvili, represented by GDI, applied to the Kutaisi City Court and requested to order Sopio Kiladze to remove the restriction preventing him from accessing the official page as it violated his right to freedom of expression.

The claimant believed that the official pages registered by officials in social media is in the public domain, which is open for the population and within which, *inter alia,* critical comments should be tolerated.

Before the hearing of the merits of the case, Sopio Kiladze removed the Facebook restriction placed on Tamaz Sozashvili's account, which was the gist of the claim. In the absence of a dispute, the court discontinued the proceedings.

The Case of Mariam Dolidze

By the end of 2018, the President of the Parliament of Georgia, Irakli Kobakhidze, posted a statement on his official Facebook page. The statement concerned the war of 8 August 2008. Mariam Dolidze posted a critical response to this statement, which was fully within the scope of freedom of expression. For this comment, Mariam Dolidze was blocked from the page and the comment was deleted.

On 14 January 2019, Mariam Dolidze, represented by GDI, applied to the Section of Administrative Cases of the Tbilisi City Court and requested the court to order Irakli Kobakhidze to remove the restriction preventing her from accessing the official page. The claimant believed that the official pages

registered by officials in social media is in the public domain, which is open for the population and within which, *inter alia,* critical comments should be tolerated.

The Section of Administrative Cases of the Tbilisi City Court did not consider the above case to be within its jurisdiction and referred it to the Section of Civil Cases. The latter discontinued the proceedings.

These cases were the first ones in our experience and therefore they are important for the debate on restriction of freedom of expression in social media by state authorities. We believe that Facebook and any other social platform where state representatives have their official, not personal, accounts are in the public domain. Actions such as deleting comments, blocking accounts, etc., amount to restriction of freedom of expression within the exercise of officials' administrative functions. It is noteworthy that, apart from the cases represented by us, in another similar case against the Ministry of Justice, the Supreme Court of Georgia gave an important legal definition. In this case, too, the Section of Administrative Cases referred a case to the Section of Civil Cases and the latter applied to the Supreme Court of Georgia regarding the jurisdiction.

The Supreme Court of Georgia, in its decision of 4 June 2019, ruled that the Section of Administrative Cases had the jurisdiction. While the decision concerned the issue of jurisdiction alone, the Supreme Court made important remarks about the substantive legal issues. The Supreme Court opined that management of the social network falls within the administrative functions of the Ministry of Justice, which is done*, inter alia*, in the context of its accountability before the public and transparency. Furthermore, the Supreme Court held that by blocking a user in the social network, the Ministry of Justice potentially restricted the claimant's freedom of expression.

Freedom of Expression and the Look of the City

The Case of Gia Goqadze

On 20 March 2019, the Kutaisi Municipal Department for Supervision drawn a report on an administrative violation against Gia Goqadze and submitted it to the Kutaisi City Court. It was alleged in the report that Gia Goqadze had violated Article 150.2[1] of the Code of Administrative Violations. According to the administrative agency, Gia Goqadze had disfigured public property of the self-governing municipality; in particular, he had posted stickers on the White Bridge near the Royal Complex and the park named after Veriko Anjaparidze. The stickers warned the population to be careful when moving on the White Bridge, which posed a danger as a result of inadequate repairs done to it.

GDI represented Gia Goqadze before the Kutaisi City Court and argued that there was no administrative violation committed as the action was fully within the scope of freedom of expression. The Kutaisi City Court agreed with this position and did not find Gia Goqadze guilty.

The Case of the Non-Commercial (Non-Entrepreneurial) Legal Entity Europe Our House

Despite the fact that Gia Goqadze was not found guilty in the administrative case discussed above, the Municipal Department of Supervision again filed a report accusing Gia Goqadze's non-commercial legal entity – Europe Our House – of an administrative violation.

GDI represented the legal entity before the Kutaisi City Court and argued that there was no administrative violation committed as the action was fully within the scope of freedom of expression. The Kutaisi City Court agreed with this position and did not find the legal entity guilty. Furthermore, the Kutaisi City Court observed that posting stickers on a cracked section of a glass bridge with the warning "It is Dangerous" is fully within the scope of freedom of expression and might also warrant the protection within the meaning of the right to live in a safe environment.

The Right of a Human Rights Advocate Not to Disclose the Information Confided in Relation to Professional Activities

The Case of Davit Subeliani

Davit Subeliani is a human rights advocate. He was summoned by the Ministry of Internal Affairs of Georgia for questioning and requested to disclose information, which in their opinion was essential to identify an alleged crime. According to Davit Subeliani, the information requested by the authorities was confided in him as a human rights advocate by another person. Accordingly, he received this information as a human rights advocate and, despite not being a defence lawyer, he had the right not to disclose the source.

GDI was Davit Subeliani's legal representative in this case. At the stage of communication with the Ministry of Internal Affairs of Georgia, GDI maintained that Davit Subeliani had received the information in the context of his profession as a human rights advocate and, therefore, it fell within the category of professional secret within the meaning of Article 1.n) of the Law of Georgia on Freedom of Speech and Expression. In particular, under this provision, professional secret implies information disclosed to a person in his/her professional capacity under the condition of protection of the confidentiality of the information, in carrying out his/her professional duties and the disclosure of which may damage the person's professional reputation. Furthermore, under Article 11 of this law, the source of professional secret is protected in absolute terms and nobody has the right to request to

divulge this source. Therefore, police were not entitled to compel Davit Subeliani to disclose the source of information.

After receiving the above arguments, there were no other actions taken by the law-enforcement authorities in relation to Davit Subeliani.

The Case of Giorgi Oniani

Giorgi Oniani is a human rights advocate and the Deputy Head of Transparency International – Georgia. He was summoned to the prosecutor's office for questioning and requested to disclose the information, which, in their opinion, was essential to identify an alleged crime. According to Giorgi Oniani, the information requested by the authorities was confided in him as a human rights advocate, in relation to his professional activities, by another person. Accordingly, the source of information was confidential and he has no right to disclose the source.

GDI was involved in the case as a representative of Giorgi Oniani. At the stage of communication with the prosecutor's office, GDI maintained that Giorgi Oniani had received the information in the context of his activity as a human rights advocate and, therefore, it fell within the category of professional secret within the meaning of Article 1.n) of the Law of Georgia on Freedom of Speech and Expression. In particular, under this provision, professional secret implies information disclosed to a person in his/her professional capacity under the condition of protection of the confidentiality of the information, in carrying out his/her professional duties and the disclosure of which may damage the person's professional reputation. Furthermore, under Article 11 of the same law, the source of professional secret is protected in absolute terms and nobody has the right to request to divulge this source. Therefore, the prosecutor's office had no right to compel Giorgi Oniani to disclose the source of his information. Having presented with these arguments, the prosecutor's office had carried out no further actions.

Public Information

The Case of Accent Holding Ltd

Accent Holding Ltd is a news agency covering current news, publishing interviews, analytical material on relevant topics, coverages and other media products on its website (www.accentnews.ge).

On 8 December 2019, the director of Accent Holding Ltd and holder of 100 percent of the shares, Gvantsa Pipia applied to the official in charge of disseminating public information at the Ministry of Economy and Sustainable Development of Georgia, Guram Sukhashvili. The applicant requested the following information:

Information about salary, bonus and benefits received by each official of the Department of Strategic Communication and/or other units in charge of public relations during 2018.

Justice Meri Guluashvili of the Tbilisi City Court partially granted our claim and ordered the respondent to disclose information about the salary received by each member of the staff of the Strategic Communication Department in 2018.

Statistics of GDI Cases

Since 2019, GDI has been processing 26 cases related to freedom of expression. Most of them are, in their content, of strategic importance for changes in the legislation, administrative practice and approaches in court practice.

The GDI cases:

1 (one) case is pending before the ECtHR.

3 (three) cases are pending before the CCG and 1 (one) constitutional claim is drafted.

Before the courts of general jurisdiction:

Criminal law: 1 (one) case is pending in criminal proceedings.

Civil law: 1 (one) case is successfully completed and 2 (two cases) are pending in civil proceedings.

Administrative law: 2 (two) cases are successfully completed; 1 (one) case is discontinued and 1 (one) case is pending in administrative proceedings.

Administrative violations: 8 (eight) successful cases, 5 (unsuccessful) cases and 1 (one) pending case.