



Report on SLAPP cases in Georgia

[Georgian Democracy Initiative](#) (GDI) is a local human rights organization focusing on civil and political rights (and their protection through strategic litigation), equality, judiciary, and civic education. During the last several years, it has been actively working on media freedom and representing journalists/media outlets/activists before administrative bodies and courts. The findings of the report are primarily based on the organization's own experience and litigated cases.

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Introduction

Strategic lawsuits against public participation (SLAPPs) are a recent trend often used to limit the freedom of speech and expression of journalists, human rights defenders and other civil society. The prevalence of SLAPPs has been identified as a matter of serious concern in most of the European countries, as substantiated by many reports on EU member states. Moreover, the 2021 annual Report of the partner associations to the “Council of Europe Platform to Promote the Protection of Journalism and Safety of Journalists” underlines the notable increase of SLAPP-related alerts reported in 2020, both in numbers of alerts and jurisdictions concerned.¹

Given that Georgia is not an exception in this regard, as the number of SLAPP cases has increased, GDI welcomes the Council of Europe’s efforts to make recommendations to its member states on the aforementioned issue and would like to introduce the main problems that Georgia faces in relation to SLAPP lawsuits.

As GDI is aware of the preparation of a recommendation by the Council of Europe’s Committee of Ministers for the regulation of SLAPP lawsuits, the present report aims to provide a brief overview of current SLAPP cases in Georgia. At the beginning, the document examines the general media environment and the state’s actions against the media and human rights defenders in Georgia. In addition, the document evaluates the guarantees in force under Georgian legislation in terms of freedom of speech and expression. Furthermore, special focus is placed on the recent widespread SLAPP cases in Georgia, as well as on the position of the claimants of SLAPP lawsuits and their attempts to create financial barriers for the defendants. The report also reviews the national courts’ approach to SLAPP cases. Given that courts often satisfy SLAPP lawsuits, the report discusses the key issues that arise during court hearings. In particular, the document specifically mentions the unusual acceleration of proceedings, the court’s disregard of the guarantees under the Georgian legislation and ignorance of the principle of equality of arms by putting the parties in an unequal position.

And finally, since the CoE recommendation should be adequately addressed to the specifics of its member states, the report offers a number of recommendations that should be taken into account considering the current situation in Georgia in terms of SLAPP cases.

1. Freedom of Media and Human Rights Situation of Human Rights Defenders in Georgia

¹ Annual Report by the partner organizations to the Council of Europe Platform to Promote the Protection of Journalism and Safety of Journalists, 2021, 30, <https://rm.coe.int/final-version-annual-report-2021-en-wanted-real-action-for-media-freedom/1680a2440e>

1.1. Media environment in Georgia

Media environment in Georgia has faced significant challenges during the last years. The quality of media freedom protection has been negatively affected by the actions/inaction of radical social groups, as well as, state officials, government agencies and their public statements.

The media environment has been negatively evaluated many times by various international organizations. For instance, according to the annual reports of "Reporters Without Borders" (RSF), the freedom of the press in Georgia deteriorated to an unprecedented level in 2021-2022. Georgia [moved](#) from 60th to 89th place in the World Press Freedom Index. The organization [emphasizes](#) that "2021 was an unprecedented year for Georgia in terms of verbal and physical assaults on journalists. Among the aggressors, included government and other public figures, especially during the election campaign," "...Official investigations lack transparency and effectiveness, which demonstrates that those found guilty of crimes against journalists often go unpunished." According to the European Commission's assessment, the conclusions made in the annual report of "Reporters Without Borders" represent an important aspect of regress of media freedom in Georgia compared to 2021, especially in terms of security of journalists.²

Challenges in Georgia's media environment, such as persecution of professional journalists, ineffectiveness of the investigative agencies, and verbal attacks on media by government officials, are also cited in the 2021 [U.S. State Department](#) and [Human Rights Watch](#) reports.

One of the main reasons for Georgia's huge drop in the International Press Freedom Index lies in the acts of aggression against journalists on July 5, 2021, and the ineffective state response. On July 5, 2021, the clergymen, members of ultranationalist, pro-Russian, homophobic, and hate groups violently and verbally abused citizens, the LGBTQI+ community, civil society activists, and media representatives who were present there to cover the events. They deliberately attacked, injured, and insulted media representatives, damaged and destroyed their equipment, and obstructed their journalistic activities. As a result, at least 53 members of the media were injured and Lekso Lashkarava, a cameraman for the Pirveli TV channel, died a few days after the physical assault. "On July 5-6, the government [violated](#) the obligation to protect media representatives from the degrading treatment and they were unable to or unwilling to ensure performance of professional activities of the journalists in a safe environment, thereby violating their freedom of expression as well." In addition, according to the Public Defender (Ombudsman) of Georgia, the law enforcement agencies did not take effective

² Report of the European Commission, Joint staff working document, Association Implementation Report on Georgia, 2022, SWD(2022)215, https://www.eeas.europa.eu/sites/default/files/documents/AAIR_2021_GEO.pdf

preventive and responsive countermeasures to prevent violent actions.³ In particular, they did not mobilize an appropriate number of law-enforcement units on Rustaveli Avenue.⁴

The tense situation in the country in the context of media freedom is exacerbated by harsh statements and actions of the authorities against journalists. For example, the [statement](#) of Georgian Prime Minister Irakli Garibashvili showed clear signs of discrediting the media. The Prime Minister said: "Most TV stations want to turn society into Zombies, they want to bombard all of society with these artificially created crises, sabotage, blackmail and conspiracies against their people and their country." The aggressive content of the authorities' statements has a negative sociopolitical effect of polarizing society, leading to the formation of radical groups, and encouraging persecution of journalists for their professional activities. With top State-political figures allowing themselves to openly discredit journalists, the media have to act under political pressure and face direct aggression from radical groups in [society](#).⁵

In addition to the aforesaid challenges, the Georgian National Communications Commission (GNCC) repeatedly tries to interfere with media freedom, as reflected in its decisions to fine broadcasters or declare them offenders. In particular, decisions of the Georgian National Communications Commission, in several cases, do not meet reasonable standards of justification, and sometimes even contradict its established practice. It is noteworthy, that The U.S. Department of State report explicitly addresses the political influence on the Commission: "Georgia's National Communications Commission [in 2021] was influenced by the ruling party," the report [states](#). This indicates that the National Communications Commission is often used by the state to restrict media freedom in Georgia.

Apart from the above-mentioned threats that generally exist regarding the freedom of expression and the media, there is a dangerous new trend of filling defamation lawsuits, whereby the government is openly trying to use the courts to suppress critical opinions, and the courts are unjustifiably satisfying such lawsuits and threatening freedom of media, speech and [expression](#).

1.2 Human Rights Situation of Human Rights Defenders

As the annual report of the Public Defender of Georgia records, "In 2021, statements of high political officials aiming to discredit organizations working on issues crucial to democratic development mainly through linking them with the opposition political party, were still relevant. An initiative to further regulate the activities of

³ Report of the Public Defender of Georgia On the Situation of Protection of Human Rights and Freedoms in Georgia, 2021, 144, <https://www.ombudsman.ge/res/docs/2022070612391254904.pdf>

⁴ Central street in Tbilisi, where the hate groups were mobilized.

⁵ GDI, Report on Freedom of Media in Georgia (Analysis of cases litigated by GDI between 2021 and January-May of 2022), 7, <https://gdi.ge/uploads/other/1/1490.pdf>

non-governmental organizations was also expressed and offensive expressions were made in relation to activists. In the past, the Public Defender has responded to similar facts and assessed them as unacceptable practices that run counter to the guarantees created at the international level to ensure the protection of human rights defenders.”

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According to a research on the needs of human rights defenders in Georgia, online oppression / bullying (67%), discrediting campaigns (58%), indifference of the police towards the process of criminal actions carried out against human rights defenders (54%) are the main threats that human rights defenders in Georgia face.⁷

Furthermore, physical attacks on human rights defenders also take place. In particular, during the “March for Dignity ” organized by “Tbilisi Pride” on July 5, 2021, hate groups attacked and chased human rights defenders and activists supporting the LGBT+ community in the streets⁸. They also raided the office of “Tbilisi Pride”, an LGBT+ human rights organization, and threw an explosive inside the building of “Human Rights House” – also a human rights organization.⁹

Alleged unlawful surveillance by the State Security Service of Georgia is another threat that human rights defenders face. In particular, according to the information spread in the media in 2021, the targets of illegal eavesdropping by the State Security Service were human rights activists / members of non-governmental organizations, who later confirmed the existence of secretly recorded conversations.¹⁰

All of the above-mentioned threats that human rights defenders often face represent a clear example of the state's intention to discredit them and limit their freedom of speech and expression. Moreover, defamation lawsuits filed against NGOs by highly ranked state officials and individuals associated with the ruling party constitute a relatively new tool of repression used by the government.

2. Law of Georgia on Freedom of Speech and Expression

Georgian legislation sets fairly high standards for the protection of freedom of speech and expression. Given that this document primarily discusses the SLAPP-related disputes most common in defamation-related cases in Georgia, the elements of

⁶ Report of the Public Defender of Georgia On the Situation of Protection of Human Rights and Freedoms in Georgia, 2021, 152, <https://www.ombudsman.ge/res/docs/2022070612391254904.pdf>

⁷ Sapari, Research on the needs of human rights defenders in Georgia, 2021, 12-13, <https://bit.ly/3QcVmfh> ; Report of the Equality Coalition on The Right to Non-Discrimination in Practice for various groups in Georgia, 2021, 95, http://www.equalitycoalition.ge/files/shares/DISCRIMINATIA_2022_ENG_forsend_1.pdf

⁸ GDI, March of Dishonor, 2021, 13-15, <https://gdi.ge/uploads/other/1/1387.pdf>

⁹ Ibid

¹⁰ Report of the Equality Coalition on The Right to Non-Discrimination in Practice for various groups in Georgia, 2021, 95, http://www.equalitycoalition.ge/files/shares/DISCRIMINATIA_2022_ENG_forsend_1.pdf

Georgian legislation that regulate the procedural and substantive standards related to this type of disputes are of particular relevance.

Article 1 of the Law of Georgia on Freedom of Speech and Expression [stipulates](#) that defamation is a statement containing a substantially false fact inflicting harm on a person; a statement damaging a person's reputation.

Georgian legislation provides the following guarantees in relation to defamation disputes:

- a) A statement shall not incur liability for defamation if made in the course of political debates, as well as in relation to carrying out his/her obligations by a member of parliament, the High Council of an Autonomous Republic, or Sakrebulo (local council) ([Article 5.1a](#)); The court shall verify these circumstances, with the participation of parties at a preliminary hearing and terminate the proceedings if the preconditions are met.
- b) A statement, which concerns an undefined group of persons and/or where the plaintiff is not clearly identified, may not be subject of litigation on defamation. ([Article 6.3](#))
- c) Litigation on defamation may not concern the protection of personal non-property rights of a governmental or administrative body. ([Article 6.4](#)). According to the law a statement shall not incur liability for defamation if made at the request of an authorized body ([Article 5.1c](#))
- d) The burden of proof for restriction of freedom of speech shall lie with the initiator of the restriction. Any reasonable doubt that cannot be confirmed under the procedure established by the law shall be resolved against the restriction of the freedom of speech (Article 7.6)
- e) The Georgian legislation sets different standards for lawsuits filed by public and private persons. In particular, when a public person files a defamation lawsuit, apart from the circumstances that must be proved by a private person (that the statement of the respondent contains a substantially false fact in relation to the plaintiff, and that the plaintiff suffered damages as a result of this statement) he or she additionally has to prove that the falseness of the stated fact was known to the respondent in advance, or the respondent acted with apparent and gross negligence, which led to spreading the statement containing a substantially false fact (Article 14). In addition, according to the law, when considering the issue of granting the status of a private person or public person, any reasonable doubt, which cannot be confirmed under the procedures established by the law, shall be resolved in favor of granting the person the status of a public person. (Article 7.3)
- f) Value judgment shall be protected by an absolute privilege (Article 4.1). Furthermore, when considering the issue of granting the status of a value judgment or a fact, any reasonable doubt, which cannot be confirmed under the

procedure established by the law, shall be resolved in favor of granting the piece of information contained in the statement the status of a thought (Article 7.5)

- g) Under the Georgian law no criminal measures are provided as a response to defamation cases. A person shall bear responsibility for defamation only under civil law .
- h) According to the Law of Georgia on Freedom of Speech and Expression if an apparently groundless claim for defamation has been filed that is aimed to create an unlawful restriction of freedom of speech and expression, the respondent shall have the right to demand monetary compensation, within reasonable limits, from the plaintiff (Article 18)

As evidenced by the above-mentioned provisions, Georgian legislation sets rather high standards for freedom of speech and expression in defamation cases. However, the plaintiffs and the courts of Georgia frequently ignore the law and establish hazardous precedents in case law, encouraging further SLAPP actions. This trend is evident from the latest lawsuits filed in the national courts of Georgia and respective decisions reached by the same courts.

3. SLAPP cases in Georgia

Attempts to restrict freedom of expression through the judiciary by private and public persons are frequent against broadcasters, media representatives, civic activists and CSOs. Critical statements by media outlets and local activists/NGOs have repeatedly triggered legal proceedings, especially at the initiative of government officials.

3.1 The claimants of SLAPP Lawsuits

GDI took an interest in the increasing number of defamation lawsuits against critical media outlets and found that their number has increased significantly. It is also noteworthy that most lawsuits are [brought](#) by powerful politicians or incumbent high-ranking officials/ or persons allegedly affiliated with the ruling party - the Georgian Dream. This link with the government raises a reasonable doubt that the lawsuits are aimed at restricting media.

The claimants of the recent defamation cases are:

12 Mayors

4 Members of Parliament

3 Ministers/ Heads of State Agencies

3 Police Officers

9 Persons allegedly affiliated with the ruling party – the “Georgian Dream”

(Thus, 31 in total)

The common targets of the lawsuits brought by the aforementioned individuals are journalists and critical media organizations. Additionally, it should be emphasized that critical media organizations face multiple cases brought against them at the same time, posing a significant threat to their watchdog role. Furthermore, the latest practice shows that non-governmental organizations have also become targets of SLAPP.

As SLAPPs are a threat to anybody who plays a watchdog role and are mostly brought by powerful people¹¹, **the position of the claimants of the aforementioned lawsuits in Georgia and their relations with the ruling party make us think that the aim of the lawsuits is to silence journalists/media/human rights defenders and illegally restrict freedom of expression.**

3.2 Examples of SLAPP cases in Georgia from 2019

One of the most recent SLAPP lawsuit has been filed by the State Security Service's head Grigol Liluashvili against two critical media organizations, Mtavari Arkhi and TV Formula and the representative of the opposition party (the United National Movement) Levan Khabeishvili on January 2022. This case concerns statements made during broadcasts on TV Formula and Mtavari Arkhi (TV Mtavari) about the criminal schemes of the so-called "call centers," and discussing that the State Security Service and its head, Mr. Liluashvili may have been linked to these schemes. He disputed these statements.

Nino Tsilosani, a member of the Georgian Parliament, also filed a lawsuit on the grounds of defamation to protect her honor and dignity on 2019. The plaintiff disputed the statements made by civil rights activist Shota Digmelashvili. The activist said on the live TV program "Shame" that Nino Tsilosani was the protector - the so-called "Krisha" (Russian word that means "roof") - of "Sano" LLC. Nino Tsilosani stated in the lawsuit that the dissemination of such information offended her honor and dignity, so she demanded a retraction of these statements.

Another example of SLAPP is the lawsuit brought before the court on April 2022 by Ucha Mamatsashvili – cousin of the country's most powerful man and the informal ruler of Georgia, Bidzina Ivanishvili. Additionally, Ucha Mamatsashvili himself is a rich and powerful businessman in Georgia. In the lawsuit, Bidzina Ivanishvili's cousin challenged the statements made by the representatives of the non-governmental organization Anti-Corruption Movement. The defendants had stated that Mr. Mamatsashvili was allegedly involved in a transnational crime (also known as the "call centers" case). They also claimed that allegedly, he was behind the price increase in Georgia's imported electricity. The plaintiff believed these statements were defamatory. Therefore, he asked the court for moral damages (GEL 150,000) and a rebuttal of the story via media.

¹¹ "Imbalance of power between the parties with the claimant having a more powerful position than the defendant - for example financially or politically - is often a characteristic of SLAPPs.", <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52022PC0177>

In addition, the Ministry of Internal Affairs often attempts to limit the freedom of critically-minded media. For example, a representative of the Ministry of Internal Affairs, an inspector of the Patrol Police of the City of Poti Gela Kvashilava filed a lawsuit against TV Pirveli on February 2021. The disputed television coverage concerns the alleged involvement of Gela Kvashilava in a criminal offense. According to the coverage, the plaintiff was driving a car loaded with drugs and ensured their safe transportation, which was left without a response from the Ministry of Internal Affairs.

Even though the statements/claims made by various media outlets seem to be quite serious at one glance, there is evidence to suggest that claimants do not act individually for the reparation of their own dignity/reputation, but rather as members (parts) of the governmental campaign to silence journalists/activists and cause the “chilling effect”. Hence, they are abusing their rights, qualifying such cases as SLAPPS.

For instance, the Ministry of Internal Affairs often publishes announcements about filing lawsuits for defamation of its representatives on its official website and warns broadcasters that the Ministry is going to protect the dignity of all its employees. According to paragraph 4 of article 6 of the Law of Georgia On Freedom of Speech and Expression, "Litigation on defamation may not concern the protection of personal non-property rights of a governmental or administrative body". In this case, indeed, the Ministry of Internal Affairs appeals to the court not directly but indirectly by using its own apparatus (for example, lawyers of the Ministry are representing the police officers in the court) and tries to protect the "reputation" of the Ministry itself by attacking critical media and making freedom of expression the target of the judiciary.

Another example is the lawsuits brought by 11 Mayors against TV channel “Mtavari Arkhi”. There are 11 applications in the court one from each Mayor, however, the texts of the lawsuits are copy-pasted and all of them demand the same amount of compensation for moral damages (55 555 GEL).

Apart from the above-mentioned 11 Mayors, Tbilisi Mayor Kakha Kaladze has recently filed a defamation lawsuit against the critical media channel TV Pirveli and the journalist Maia Mamulashvili, demanding 100 000 GEL (around 35 393 EUR) for moral damages. The defendants had stated that Kakha Kaladze had allegedly received 60 million GEL from only one tender. Kaladze launched his lawsuit at the Tbilisi City Court on June 20, seeking withdrawal of the “defamatory information” and compensation for moral damages. **The most alarming part of Georgian context is that unlike other European countries, Georgian courts satisfy such lawsuits, ignoring case law of the European Court of Human Rights and Georgian legislation (please see main gaps of the decisions in the next sections).**

Since the decisions of the Tbilisi City Court in the cases of Grigol Liluashvili, Nino Tsilosani and Ucha Mamatsashvili set a perilous precedent, there is an expectation that the number of SLAPP suits will increase even more in the hope that the court will

satisfy them. As for the aforesaid rulings, they are pending before the second instance court (the Appellate Court of Tbilisi).

3.3 Claimants' attempts to create financial barriers for the defendants

SLAPP claimants often seek damages that are disproportionate to the conduct targeted by their lawsuits. This includes demanding exorbitantly high compensation that could financially ruin the [victims](#).

In the case of Georgia, plaintiffs often demand a disproportionate amount to compensate for moral damages, which makes us think that the real intention is to create financial obstacles for the media and civil society. Such an approach is extremely dangerous considering that especially critical media outlets face financial barriers from almost every direction (For example, the National Communications Commission of Georgia stands out for imposing particularly high sanctions against critical media)¹². Thus, the creation of additional barriers for the media through defamation lawsuits clearly indicates the goal of the government and those connected to the government to suppress critical opinion.

According to statistics, plaintiffs in defamation cases against the media and civil society claim the following amounts as compensation for moral damages:

11 Mayors (separately) 55 555 GEL (Around 19 438 EUR)

8 individuals – 3 000 – 150 000 GEL (1050 - 52 485 EUR)

6 individuals – 1 GEL (0.35 EUR)

There was a [case](#) when the plaintiff demanded a large amount of money to compensate for moral and reputational damage, and in order to secure the requested amount, he asked the court to seize personal accounts of the defendants before the delivery of the judgement. Specifically, this request was made by businessman Nugzar Alughishvili (according to [reports](#) in the media, Nugzar Alughishvili is a member of the close circle of Irakli Gharibashvili's family and the actual manager of his business) in the lawsuit filed against journalists of “TV Pirveli”, Nodar Meladze and Maka Andronikashvili. Fortunately, the court did not satisfy that motion. However, the numbers indicate that plaintiffs often attempt to cause financial problems to media outlets/activists.

4. The Courts' Approach to SLAPP Lawsuits

As mentioned earlier, the most alarming trend in SLAPP cases in Georgia are not the lawsuits themselves but the rate of satisfaction of such cases and thus the decisions of the national courts.

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Please

see

<https://gdi.ge/en/news/the-communications-commission-continues-attacking-media-freedom.page>

This issue is a part of the broader problem related to the lack of independence and impartiality of the judiciary criticized by all international and national actors monitoring the situation in Georgia. For instance, the 2021 U.S. State Department report [highlights](#) some of the problems regarding the lack of judicial independence, including the “impact of the High Council’s powers on the independence of individual judges, manipulation of the case distribution system, a lack of transparency in the High Council’s activities, and shortcomings in the High Council’s appointments of judges and court chairpersons.” It is noteworthy that implementation of a transparent and effective judicial reform strategy was one of the EU Commission’s [recommendations](#) in order to grant Georgia the candidate status for membership of the European Union.

Unjustified court decisions in politically motivated cases, significant changes in the composition of the High Council of Justice and the presence of an influential group of judges within the system (so called “Clan”) leads to a conclusion that there is a judicial bias in the justice sector. Hence, state officials and individuals affiliated with the ruling party have high expectations to win cases before the national courts. **Unfortunately, there is a similar trend in SLAPP suits, making the Georgian context more complex and challenging.**

After careful evaluation of the several SLAPP cases, GDI has identified the following shortcomings:

4.1 Rapid consideration of SLAPP cases

In the European context many SLAPP cases are characterized by long proceedings, creating additional burdens to the national court system and wasting time and resources of respondents. Georgia does not follow this pattern. In particular, unlike the general, longstanding practice established of delaying hearings in national courts, the judges considered SLAPP cases filed by influential people extraordinarily quickly and within a tight time frame.

For instance, the judge took a particular interest in the lawsuit filed by the head of the Security Service. In contrast to the established practice of reviewing similar cases, she considered this particular dispute unusually rapidly: in just 10 weeks after the lawsuit had been lodged. Furthermore, another judge demonstrated a special interest in Bidzina Ivanishvili's cousin's claim and examined the case within a tight time frame: in 4 months after the claim was submitted.

4.2 Shifting the burden of proof contrary to Georgian legislation

As mentioned earlier, article 7.6 of the Law of Georgia on Freedom of Speech and Expression stipulates that: a) The burden of proof for limitation of freedom of speech shall lie with the initiator of the limitation. Any reasonable doubt that cannot be confirmed under the procedure established by the law shall be resolved against the limitation of the freedom of speech.

Despite such standard, the practice established by the courts is completely contrary to the legislation of Georgia. According to the court rulings, not the plaintiff (as provided by the law), but the defendant is obliged to prove that the information published by him/her was not defamatory when it comes to statements about participation in alleged criminal acts.

According to the courts, the shifting of the burden of proof is based on the European Court of Human Rights' case law.¹³ However, Georgian courts interpret the decisions of the ECHR in a manipulative way and ignore the fact that the ECHR does not have a mandatory standard for the distribution of the burden of proof, but it depends on the legislation of the member countries themselves. Thus, the national courts should be guided by the legislation of Georgia, which establishes high guarantees of freedom of speech and expression. However, shifting the burden of proof has led to an increase in the number of SLAPP lawsuits and the number of cases in which the courts have satisfied such lawsuits.

4.3 The courts ignore the fact that the statements made by the media concerned the issue of public discussion

Article 15 of the Law of Georgia on Freedom of Speech and Expression stipulates: "A person shall be granted a qualified privilege for a statement containing a substantially false fact, if:

- a) he/she took reasonable measures to verify the accuracy of the fact, but was unable to avoid a mistake, and took effective measures in order to restore the reputation of the person damaged by the slander;
- b) he/she aimed to protect the legitimate interests of society, and the benefits protected exceeded the damage caused
- e) his/her statement was a fair and accurate report in relation to the events attracting public attention."

The contribution of journalists to public discussion of issues affecting the life of the whole community is considered as one of the important values in a democratic society by the European Court of Human Rights. The ECHR has stated that "although the press must not overstep certain bounds, regarding in particular protection of the reputation and rights of others, its task is nevertheless to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest."¹⁴ Thus, the ECHR mostly strikes a fair balance between contributing to public discussion and the right to private life. In contrast, the national courts of Georgia ignore the Georgian legislation and the case law of ECHR and do not pay attention to the importance of the issue to which the reported statements relate,

¹³ Usually they cite the case of *McVICAR v. THE UNITED KINGDOM*.

¹⁴ Guide on Article 10 of the European Convention on Human Rights, 125, https://www.echr.coe.int/documents/guide_art_10_eng.pdf

the discussion surrounding it, and the role of the media and civil society in contributing to the discussion.

Despite the fact that the investigative reports prepared by the media and the conclusions made by the civil society in all the above-mentioned cases were about important issues for the society and the applicants based their assessments on a number of other facts, the court ignored these considerations and Article 15 of the Law of Georgia on Freedom of Speech and Expression without any justification.

4.4 The courts ignore the existing grounds for termination of proceedings

A judge may terminate the proceedings during the preparation of the case for the main hearing if there is any of the grounds prescribed in article 5 of the Law of Georgia on Freedom of Speech and Expression.

In particular, according to Article 5: „A statement shall not incur liability for slander if made:

- a) in the course of political debates, as well as in relation to carrying out his/her obligations by a member of parliament or Sakrebulo (local council);
- b) at pre-trial and trial procedures, before the public defender, at the Parliament or Sakrebulo (local council) as well as at their committee sittings, within the limits of exercising his/her authority by a person;
- c) at the request of an authorized body. “

Although statements challenged by Grigol Liluashvili were made by a politician, the Member of the Georgian Parliament, Levan Khabeishvili (i.e., in the course of political debates), the judge ignored Article 5(a) of the aforesaid law, did not terminate the proceedings during the preparation of the case for the main hearing and satisfied the lawsuit of the head of the State Security Service, Grigol Liluashvili. Such an approach once again indicates that despite the strong guarantees under the legislation of Georgia, the courts still ignore the law and make unsubstantiated decisions.

4.5 Against the principle of equality of arms, the courts do not satisfy the motions of the defendant

Although equality of arms should be guaranteed during the whole process, the courts do not give the defendants the equal opportunity to apply all the measures and present the relevant evidence to support their position in cases where the claimants are influential persons¹⁵.

For instance, in the case of Grigol Liluashvili, the judge dismissed almost all the motions of the respondent TV stations and an MP, including petitions regarding the termination of the case and attachment of evidence to the case file. Moreover, in the case of Ucha Mamatsashvili, the judge approved those witnesses who were expected to

¹⁵ Under influential persons we mean at least the head of the State Security Service- Grigol Liluashvili and the cousin of Bidzina Ivanishvili- Ucha Mamatsashvili.

testify in Mamatsashvili's favor (including Zurab Noghaideli (Former Prime Minister of Georgia), Davit Narmania (Chairman of the Georgian National Energy And Water Supply Regulatory Commission) and Davit Thvalabeishvili (General Director of the Electricity Market Operator). In contrast, the judge refused to interview those witnesses who could provide the court with information about the persons involved in the transnational crime and the alleged corruption scheme (including Giorgi Kobulia (Former Minister of Economy and Sustainable Development of Georgia), Levan Khabeishvili (Member of the Parliament of Georgia and representative of the opposition party), and Nika Gvaramia (General Director of critical media outlet "Mtavari Arkhi")).

In combination with the shifted burden of proof, such practice deprives the defendants of any chances to win the case.

4.6 The courts rule against the ineligible defendant

According to Georgian legislation, "the owner of a media outlet shall be the respondent in the litigation related to a slander published in the media outlet by a journalist" (Article 6.2 of the Law of Georgia on Freedom of Speech and Expression). Thus, the legislation of Georgia does not establish a person's individual responsibility if he/she makes statements on behalf of the media (organization).

Although Georgia does not have a similar record in the case of statements made by representatives of non-governmental organizations, we believe that the court should develop a similar approach and not impose liability on individuals (natural persons) and an organization (legal entity) at the same time, when it can be identified, in which capacity the statements have been made.

Contrary to this, Ucha Mamatsashvili filed a lawsuit demanding compensation for moral damages from the non-governmental organization and separately from its representatives (who made statements on behalf of the organization). The defendant requested to dismiss Mr. Parulava and Mr. Urushadze as irrelevant defendants in the case, based on the argument that they made statements not in the capacity of private individuals but as the representatives of a non-governmental organization and it was quite clear in each disputed interview. Still, the judge did not satisfy the request and found the defendants responsible not only as representatives of the organization but also as private individuals.

5. Conclusion

Vexatious lawsuits, mostly based on defamation provisions, against media and civil society in Georgia are a clear example of a new way to suppress critical opinion. This is emphasized once again by the positions/status of the persons who bring such lawsuits. In particular, they are people related to the ruling party and high ranking state officials. The cases mentioned in the present report indicate that Georgian media and civil society faces SLAPP lawsuits, the purpose of which is to silence the media and civil society.

Although Georgian law provides a number of ways to deal with SLAPP lawsuits, the courts, in many cases, take the side of influential plaintiffs and satisfy their lawsuits without any justification. Thus, the courts' decisions pose yet another threat to Georgia's democratic development, as they have a "chilling effect" on the freedom of speech and expression in the country and contribute to the increase in the number of SLAPP lawsuits.

6. Recommendations

Since the CoE recommendation should be adequately addressed to the specifics of its member states, we believe that, in light of the current situation in Georgia, the Council of Europe should consider the following in its recommendations:

1. Advise national courts to apply legislation that provides greater guarantees of freedom of speech and expression. Among others, courts should be advised to shift the burden of proof on the claimant;
2. Advise the national courts to terminate the proceedings during the preparation of the case for the main hearing in the presence of an ineligible defendant. The legislative bodies should also be recommended to include in the legislation the presence of an ineligible defendant in the case as a basis for termination of the case;
3. Advise the national courts to terminate the proceedings during the preparation of the case for the main hearing when a governmental body appeals indirectly, using individuals, trying to protect the reputation of the body itself;
4. Advise national courts to strike a fair balance between freedom of expression and the right to private life by taking under consideration the contribution of journalists and civil society to public discussion of issues affecting the life of the community;
5. Advise national courts to ensure the observance of equality of arms and give the parties the opportunity to equally defend their positions;
6. If the states are recommended to accelerate the proceedings of SLAPP cases, it should be mentioned that the recommendation on the acceleration applies to the states where the prolongation of SLAPP cases is an issue;
7. A clear definition of SLAPP should be provided, one of the criterion of which should be the claimant's purpose to limit the defendant's freedom of speech and expression.