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Unlawful Interference in the Media and Discriminatory Attitudes towards Media Representatives

Policy Brief

AUTHOR:

Ioseb Edisherashvili*

On behalf of the Georgian Young Lawyers' Association



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Executive Summary

The following document provides a detailed assessment of the challenges facing the media in Georgia. It analyses several important aspects that contribute to the creation of a hostile and unfriendly environment for media outlets and journalists. In the last 5-6 years, the safety of media representatives has significantly worsened and cases of verbal or physical attacks on journalists, and illegal interference in their professional activities have become even more frequent. In addition, the authorities have provided a lacklustre and insufficient response—they do not prevent such acts, do not investigate allegations and do not prosecute the perpetrators. The inaction of state agencies and the aggressive rhetoric of high-ranking officials encouraged the unprecedented attack on media representatives on 5-6 July 2021, which saw radical and homophobic groups assault more than 50 media representatives. The early 2022 arrest and prosecution of Nika Gvaramia, director of the TV Channel "Mtavari," the most popular critical media channel, is another testament to the attack on the media.

Problems exist in the media's ability to self-regulate as well as the regulatory body governing the media. The majority of Georgian citizens are unaware of the existence of any self-regulatory mechanisms or a complaint system that is designed to receive complaints from the public about adherence to professional media standards. On the other hand the state regulatory body governing the media has revealed multiple

* Ioseb Edisherashvili is a human rights analyst working for the Georgian Young Lawyers' Association.

instances of interference in the content of broadcasting and unjustified restriction of freedom of expression. Such decisions are largely directed towards media critical of the ruling party, which creates doubt about the independence and impartiality of the regulatory body. Examples include the blatant misinterpretation of the Georgian Law on Communications and Advertising, resulting in the “Mtavari” channel being fined for “obscene” material. Additionally, the regulator regularly fines broadcasters for airing political ads during non-election period, which is not prohibited by Georgian legislation.

Furthermore state agencies present a discriminatory and hostile attitude towards journalists, which has manifested itself in withholding public information. State agencies are required by law to provide public information to everyone in the vast majority of cases, however media outlets and journalists face unjustified obstacles in the process of receiving such information. State agencies often delay or completely refuse to give out public information.

All of the above mentioned problems contribute to an environment that stymies the fundamental right of freedom of expression. This document provides a detailed analysis of the problems mentioned above as well as recommendations to state agencies on how to address the problems to improve the media environment and the realisation of fundamental human rights.

Introduction

Georgian legislation and international acts guarantee freedom of expression and the media as well as the creation of a free, equal and safe environment for journalistic activity. The last five years has presented many challenges to realising these rights. The main issue is the state’s attitude and behaviour towards media outlets critical of the ruling party. Aggressive rhetoric and discrimination towards media representatives have intensified in the last years. State agencies demonstrate a negative attitude towards media outlets and the actions of journalists, furthermore state agencies’ actions do not align with local and international standards governing media freedom and independence. The Georgian National Communications Commission (GNCC), which is supposed to be the independent regulatory authority that regulates TV broadcasting (among other media), has created problems in the media environment. In some cases, the GNCC has attempted to control the content of broadcasters and influence decisions. These actions were controversial and frequently had little or no legal basis or relied upon the misinter-

pretation of the law. Other state agencies delay or outright refrain from providing public information to journalists. All these aspects cumulatively create an unfriendly media environment and hinder the realisation of fundamental rights.

1. The Safety of Representatives of the Media

Over the last five years the safety of media representatives significantly worsened and cases of verbal or physical attacks on journalists and the interference in their professional activities became even more frequent.¹ The state does not ensure a proper response to or prevention of such facts. When it reaches the point of investigation, cases are either ineffectively investigated or not at all. For example, the cases of journalists injured during the 20-21 June 2019 protest rally have still not been investigated.²

The court's approach to cases of attacks on journalists is also problematic, as it does not identify the hate motive or aggravating circumstances and applies a disproportionately low sanction. A good example of this is the February 2021 attack on the journalist Vakho Sanaia and his family and the court's subsequent ineffective legal response to it.³

Article 154 of the Criminal Code of Georgia prohibits unlawful interference in journalistic activities. Georgian Young Lawyers' Association (GYLA) requested public information from the Ministry of Internal Affairs, Prosecutor's Office and Courts of Georgia regarding Article 154. In 2020 the police started investigation in seven cases, and criminal prosecution began in two cases. In 2021 police started investigation in 13 cases, while criminal prosecution began in 63 cases.⁴ From January – July 2022 police began investigation on eight cases and prosecution began in four cases. The courts do not record statistics on Article 154. The above mentioned shows a huge disparity between open investigations and prosecutions. Furthermore, as the courts do not produce stats, assessment remains difficult.

The inaction of state agencies and the aggressive rhetoric of high-ranking officials toward the media encouraged an unprecedented attack on media representatives on 5-6 July 2021, during which radical and homophobic groups assaulted more than 50 media representatives.⁵ Aleksandre Lashkarava, an operator of "TV Pirveli," died a few days later.⁶ The state's response to the violence was still inadequate.⁷ Even though there was evidence of numerous instances of the organisers calling on the public to commit acts of violence, none of the organisers of the violence has been charged.⁸ In addition, the story that aired on "TV Pirveli" on 12 June 2022 made disturbing allegations that specific

¹ Media Advocacy Coalition [Facebook page], 12 April 2022, "Media Advocacy Coalition responds to the facts of the attack on the employees of Formula TV," available at: <https://bit.ly/3ovTFyI>, updated: 31 August 2022; GYLA's, [Facebook page], 9 May 2021, "Media Advocacy Coalition condemns attacks on journalists by clerics," available: <https://bit.ly/3rlkX76>, updated: 31 August 2022; Media Advocacy Coalition [Facebook page], 19 November 2021, "Media Advocacy Coalition" considers the restriction of the rights of another Ukrainian journalist in Georgia as alarming," available at: <https://bit.ly/31FBiyG>, updated: 31 August 2022.

² On 20-12 June 2019, the Ministry of Internal Affairs of Georgia made a decision to break up the rally, which turned into a large-scale violation of the rights of the people at the rally. See "GYLA appeals to the European Court on behalf of the injured demonstrators and journalists on June 20," The website of the GYLA, 4 July 2021. Available: <https://bit.ly/3O9cl8B>, updated: 31 August 2022.

³ On 25 February 2021, TV Formula journalist Vakho Sanaia and his family members were attacked. The court sentence prescribed disproportionately low sanctions against the offenders. See in detail "In the case of the attack on journalist Vakho Sanaia, GDI applies to the prosecutor's office and demands an appeal of the court's verdict as part of the punishment." See <https://bit.ly/3L66GYP>; Media Advocacy Coalition [Facebook page], 25 August 2021, "Media Advocacy Coalition reacts to the attack on journalist Vakho Sanaia and his family." Available: <https://bit.ly/3ven2rw>, updated: 31 August 2022.

⁴ A large number of cases where due to the 5-6 July 2021 events.

⁵ Svimonishvili M. and others, Georgian Young Lawyers' Association, "Chronology and legal assessment of the events of 5-6 July," 2021, 13-21, available at: <https://bit.ly/3lRlqyX>, updated: 31 August 2022.

⁶ See: Media Advocacy Coalition [Facebook page], 11 July 2021 "The coalition expresses our sorrow over the death of the operator of "TV Pirveli" Alexander Lashkarava." Available: <https://bit.ly/3jsQFjp>, updated: 31 August 2022.

⁷ Ibid.

⁸ Ibid.

employees of the State Security Service were involved in the preparation of the violent actions on 5 July.⁹

In addition, it is significant that even after the events of 5-6 July, government officials often treat the media with a discriminatory attitude¹⁰ and continue to respond to their legitimate demands with aggressive rhetoric.¹¹

The culmination of the fight against the critical media was the arrest and prosecution of Nika Gvaramia. GYLA monitored the court proceedings in the so-called “Rustavi 2 Case” and analysed the verdict given to Nika Gvaramia. The court proceedings raise questions about the standards of indicting the accused, the trial, the sentencing, and the independence and impartiality of the judge at different stages of the court proceedings, which is why it can be assumed that the verdict is unjustified. Furthermore, much of evidence examined in the courtroom raises doubts about Nika Gvaramia’s guilt.¹²

2. Problems with Self-regulation and the Controversial Approach of the Regulatory Body

Media regulation in Georgia has two aspects, the self-regulation mechanism and a regulatory body. Self-regulation is based on the Georgian Charter of Journalistic Ethics (GCJE), which was founded in December 2009 by a group of Georgian journalists who wanted to promote professional standards in the media.¹³ The GCJE oversees the Charter of Journalistic Ethics, which establishes the obligation to correct errors, to protect confidential sources of information, to respect children’s rights and privacy, and to avoid discrimination. The charter is managed by nine council members as selected by the charter’s members. The council considers the facts of any violation of professional standards on behalf of the charter’s members on the basis of submitted complaints. The GCJE also promotes media freedom and issues statements when media freedom is threatened.¹⁴

The main issue regarding the self-regulatory body is a lack of public awareness. Most citizens are unaware of the existence of a complaint system. A 2022 survey conducted by Europe Foundation found that 84% of the respondents did not know about the existence of a complaint system.¹⁵

In terms of government regulation, the main regulatory body is the Georgian National Communications Commission (GNCC). The GNCC, is formally an independent body. Article 6(1) of the Broadcasting Law states: “The Commission, members of the Commission and employ-

⁹ See: “The events that took place on 5-6 July, 2021 have not yet been properly investigated” The website of GYLA, 5 July 2022. <https://bit.ly/3bXythH> updated: 31 August 2022.

¹⁰ See: GYLA, [Facebook page], 11 November 2021, “Coalition for Media Advocacy calls on the Ministry of Justice to stop discrimination against journalists,” available at: <https://bit.ly/3rKf5du>, updated: 31 August 2022.

¹¹ See: Coalition for Media Advocacy [Facebook page], 17 July 2021, “Coalition for Media Advocacy” partner organisations express our concern over the discrediting of “Mtavari Channel,” “TV Pirveli” and “Formula” by the Prime Minister, as well as regarding the threats against Nika Gvaramia,” available: <https://bit.ly/3dtG9Wb>, updated: 31 August 2022; Media Advocacy Coalition [Facebook page], 23 July 2021, “We call on all public figures to stop inciting hostility in society and discrediting the media,” available at: <https://bit.ly/3EKpoSo>, updated: 31 August 2022.

¹² See: According to GYLA, the verdict in Nika Gvaramia’s case is unjustified. Georgian Young Lawyers’ website. 3 June 2022. Available at: <https://bit.ly/3BTJlae> updated: 31 August 2022

¹³ See: official website of GCJE. Available at: <https://bit.ly/3A8HT1Y> updated: 31 August 2022.

¹⁴ See official website of GCJE. available at: <https://bit.ly/3Cnd7Fe> updated: 31 August 2022.

¹⁵ See: Georgia Media Landscape Assessment, 2021. Europe foundation. 2021. p. 34 available at: <https://bit.ly/3CJQXO> updated: 31 August 2022

ees of the staff of the Commission are independent in exercising their powers and abide only by the law.” However, concerns have been expressed by CSOs and other individuals about the independence of the Commission in practice.

In recent years, there have been several cases of the GNCC interfering in the content of broadcasting and engaging in unjustified restriction of freedom of expression. On 1 February 2021, the GNCC, without a legislative mandate, found the TV Company “Mtavari Channel” guilty of airing a story containing “obscene” content, resulting in a fine.¹⁶ This decision by the GNCC was based on an incorrect interpretation of the law and limited freedom of expression.¹⁷

In addition, it is significant that, like in previous years, the GNCC often assigns administrative violations for airing political advertisements to the broadcaster during the non-election period, without having a legal basis for it.¹⁸ The regulator fined the broadcaster for airing political advertisements, based on the Law on Advertising, which does not apply to advertisements of political content. According to the Public Defender’s assessment, the legislation of Georgia does not contain rules regulating non-election advertising and, therefore, does not directly prohibit the placement of political advertising during the non-election period.¹⁹

Similarly on 23 August 2022, the GNCC fined several media broadcasters for airing the “Back to Europe” advertisement, which criticised the states actions regarding European integration. This decision was devoid of legal basis and opposed already existing court practice regarding political ads.²⁰

3. Problems with Public Information

Public information is information protected by a public institution, as well as information received, processed, created or sent by a public institution or an employee in connection with official activities and proactively published by a public institution. By law, every citizen has the right to request public information, regardless of its form.²¹ In recent years it has become increasingly difficult for journalists and NGOs to get information from public authorities. This problem mainly concerns critical media outlets and representatives.

According to the Public Defender of Georgia, legislation related to freedom of information in the country is flawed, has gaps and needs fundamental reforms to meet international standards.²² The reforms were initiated almost 10 years ago, however since that time there has been no progress.

¹⁶ See: WITH THE HELP OF GYLA, MTAVARI ARKHI IS APPEALING TO THE CONSTITUTIONAL COURT AGAINST THE AUTHORITY OF THE COMMUNICATIONS COMMISSION TO SANCTION “OBSCENE” PROGRAMS, GYLA, 29 March 2021. Available at: <https://bit.ly/3AGMyty>. Updated: 31 August 2022.

¹⁷ See: Report of the Public Defender of Georgia “On the State of Protection of Human Rights and Freedoms in Georgia,” 2021, 177, available at: <https://bit.ly/3PPsf1c>. Updated: 31 August 2022.

¹⁸ Regarding the imposition of administrative responsibility for “Mtavari Channel” LLC, the website of the National Communications Commission, 25 December 2021, available at: <https://bit.ly/3KGnUeW>. Updated: 31 August 2022.

¹⁹ See: Report of the Public Defender of Georgia “On the State of Protection of Human Rights and Freedoms in Georgia,” 2021, 177, available at: <https://bit.ly/3PPsf1c>. Updated: 31 August 2022.

²⁰ See Coalition for Media Advocacy [Facebook page], 23 August 2021, The decision of the Communications Commission is unfounded and significantly worsens the media environment in Georgia. Available at: <https://bit.ly/3Aidz4U>. Updated: 31 August 2022.

²¹ See General Administrative Code of Georgia. Art 28. Available at: <https://bit.ly/3CJWwd>. Updated: 31 August 2022.

²² See Parliamentary Report of the Public Defender of Georgia for 2020, 250-252. Available at: <https://bit.ly/3Kvvr7H>. Updated: 31 August 2022.

Frequently, the person requesting information does not receive it within the 10-day timeframe set by the legislation.^{23,24} The problem is exacerbated when it comes to journalists, as state authorities and politicians are antagonistic toward journalists.²⁵

It is worth noting that in some cases missing the deadline, not providing information and not providing it completely can be due to a lack of resources in a specific institution. Nevertheless, Georgia legislation does not consider those problems to be a legitimate reason for not providing information, incompletely providing it or violating the deadline and does not relieve the administrative body from the obligations imposed by law.

Recommendations

In order to ensure the full realisation of freedom of expression and freedom of the media, the Government of Georgia must:

- Respond in a timely manner and effectively investigate instances of illegal interference and excessive force in the implementation of professional activities for media representatives;
- Indict the organisers of violence against the media during the events of 5-6 July 2022;
- Refrain from discriminatory attitudes towards critical media representatives;
- Ensure the courts track and publicise stats regarding Article 154 of the Criminal Code;
- Increase public awareness about the various media regulatory and complaints systems that exist in Georgia and the right of members of the public to use these systems;
- Ensure the GNCC acts within the scope of its mandate and legislation, avoiding interpretations contrary to the law and respecting the recognised standard of media freedom and public information;
- Implement a co-regulatory system with a central independent body, dominated by media representatives, deciding on complaints rather than this being done by each broadcaster;
- Finalise amendments to the draft law regulating the freedom of information and the accompanying legislative changes and initiate them in the Parliament of Georgia;
- Ensure state agencies provide public information to media representatives in accordance with the law.

²³ See: GYLA study: Challenges regarding access to the public information in Georgia, The website of the Young Lawyers Association of Georgia. 28 September 2017 available in Georgian: <https://bit.ly/3KznW9o>. Updated: 31 August 2022.

²⁴ General Administrative Code of Georgia, Art 40, part I.

²⁵ Media Advocacy Coalition [Facebook page], 8 April 2020, "Media Advocacy Coalition calls on the government to abandon the practice of discriminating against journalists," available in Georgian: <https://bit.ly/3wHWrVr> updated: 31 August 2022; also see: "How access to public information for the media has deteriorated," Mediachecker, 20 February 2022, available in Georgian: <https://bit.ly/3e9u50X> updated: 31 August 2022.

