

MEDIA DEVELOPMENT FOUNDATION

MEDIA FREEDOM 2015

REPORT

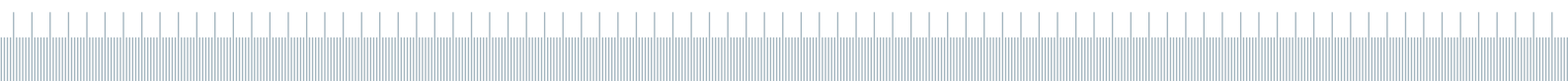


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მედია განვითარების ფონდი
MEDIA DEVELOPMENT FOUNDATION

MEDIA FREEDOM 2015



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The report is published within the framework of the project supported by the National Endowment for Democracy (NED).

With the support of the National Endowment for Democracy, NED, the Media Development Foundation (MDF) publishes periodic reports on media freedom in Georgia.

Reports rest on the analysis of documents, official information requested from public entities and media reports.

This report consists of eight chapters covering the following topics: legislative environment; financial and business environment; media ownership issues; interference in editorial independence / programs taken off the air; legal practice regarding the cases of freedom of information and expression; media-related high-profile cases in 2015; monitoring of the implementation of Freedom of Expression Chapter of Action Plan of the Government of Georgia on the Protection of Human Rights; and Board of Trustees of the Public Broadcaster – a problem of appointment of candidates nominated by political opposition.

The following reports will be published on a quarterly basis and will enable society to analyze ongoing processes and trends in the Georgian media.

Those chapters of this report, which discuss the implementation of Human Rights Action Plan and the crisis that have emerged with regard to the manning of the Board of Trustees of the Public Broadcaster, as well as availability of public information include recommendations designed to help policy makers and media representatives improve the media environment.

KEY FINDINGS OF THE REPORT

The analysis of 2015 developments resulted in the following key findings:

- The legislation regulating media and freedom of expression continues to ensure strong legislative guarantees for the protection of journalists' rights. However, the amendment to the Criminal Code of Georgia in 2015, which makes public calls for violent actions punishable under the criminal law, was assessed by civil society organizations, in the light of ineffective fight of law enforcement bodies against hate crimes, as limiting the freedom of expression of media, nongovernmental organizations, religious and ethnic minority groups and political opponents;

- The hasty introduction of new advertisement regulations was seen by a segment of media as an attempt to redistribute the advertisement market. New regulations resulted in 2015 in the increase of advertisement revenues to Imedi TV Company alone – by 2,9 million GEL. Advertisement revenues to Rustavi 2 decreased by 7,3 million GEL and to Maestro by 5,3 million GEL, GDS TV by 788 113 GEL.
- The entry of the market by a new television audience measurement company smacked of the attempt to redistribute the market. The emergence of the new actor was preceded by the tax inspection of the television audience measurement company, which has been long operating on the market, by the Revenue Service in 2013–2014.
- The placement of budgetary advertisements in media outlets that incite hatred and anti-western sentiments remains a problem.
- 2015 saw one case of tax inspection in a regional media outlet.
- Problems with the ownership concerning two TV companies, Rustavi 2 and Maestro, arisen after repeated public statements made by high political appointees and influential figures that the editorial policy of Rustavi 2 and other media outlets were unacceptable.
- In 2015, three political talk shows were taken off the air. A comment of a representative of the ruling party on the closure of popular talk shows raised doubts about the interest of the government in closing these talk shows. The head of information service and journalists of a regional TV channel were dismissed as a result of the interference of the owner in the editorial independence of the channel.
- Separate state entities, including courts, did not provide information concerning civil servants citing personal data protection as the ground. To challenge the established practice, the MDF has appealed to the Constitutional Court. The claim of the MDF concerns such an interpretation of the provision that allows to conceal the information on the identities of participants in court decisions.
- In 2015, two complaints were filed with courts against the infringement on honor and dignity by journalists' reports exposing the involvement of public servants in corruption. Yet another court dispute concerned the rejection of information about a family member of the opposition party published in online media.
- In 2015, public statements were made about two instances of media representatives being spied on and three instances of being blackmailed. Two of these instances concerned Rustavi 2 representatives and one concerned a journalist of the Georgian Public Broadcaster.
- All three cases of threat were connected with the journalistic activity.
- Of three cases of impeding the professional activity of journalists, the reaction was instant only to the fact that related to the protest action of the opposition political party whereas two remaining cases which concerned the impediment on the part of representatives of authorities, the investigation did not find signs of wrongdoing against anyone.
- All the three cases of illegal detention involved employees of critical media outlet – Tabula TV company. Two of them were not directly related to the implementation of professional activity of journalists.
- Journalists were summoned to the prosecutor's office in the capacity of witnesses in relation to the coverage of topics of high public interests and sources of information. Both journalists were from Rustavi 2.
- There were attempts to thwart concerts organized by Rustavi 2 in the regions.
- A criminal proceeding was initiated to investigate into the blocking of Facebook page of 13 June vol-

unteers, however, the investigation has not brought any results yet.

- The monitoring of the implementation of Freedom of Expression Chapter of Action Plan on the Protection of Human Rights in 2014 showed that law enforcement bodies did not register high profile cases concerning media. Nor do they react to cases discussed in the report of the Public Defender while investigations are too protracted and show no real results.
- After two years of the adoption of amendments to the Law on Broadcasting, the parliament of Georgia has failed to achieve consensus on the approval of candidates to the Board of Trustees of the Georgian Public Broadcaster, nominated by the political opposition and two of total nine places, assigned to the political opposition, still remain vacant. Legal procedure of drawing lots among the operating trustees to determine their terms in office was conducted 2 years later, only after the MDF report on this problem was released.

MEDIA DEVELOPMENT FOUNDATION STUDIES IN ECRI REPORT

The European Commission Against Racism and Intolerance (ECRI) released its fifth monitoring cycle report¹ on March 1, 2016 and it covers the situation from 2012 through June 17, 2015. In the part related to hate speech, ECRI cites a report from the Media Development Foundation and offers a set of recommendations.

The report focuses on the problems of signing budget contracts with several media outlets with xenophobic and homophobic attitudes, as well as on intolerant comments made by some high ranking politicians.

“During 2013-14, according to information obtained by MDF, Obiektivi received at least USD 25 000 and the newspapers Alia and Kviris Chronika together around USD 20 000, from government ministries and agencies as part of advertisement contracts and other agreements”², reads the report and offers the following recommendation:

Recommendation:

- ECRI recommends that the authorities review their contracts with media outlets and cancel or not renew them in cases where media are known to engage in racist or homo-/transphobic hate speech. The authorities should also ensure that future contracts contain a clause stipulating that racist or homo- /transphobic hate speech will result in contract termination. (33).

¹ <http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Georgia/GEO-CbC-V-2016-002-ENG.pdf>

² Information received from MDF

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Georgian legislation regulating freedom of expression and media creates firm guarantees for protecting the rights of journalists largely due to the Law on Freedom of Speech and Expression adopted in 2004. Some amendments made to the legislation in 2015 triggered a wave of criticism from the civil society and a part of media. On the one hand, criminalization of public calls for violent actions was slammed as restricting freedom of expression; on the other hand, imposing advertising limits in an accelerated manner was perceived as an attempt to exert influence on media market. Just these amendments will be reviewed in the present chapter. The amendments were made to the following laws:

1. Amendment to the Criminal Code of Georgia; Article 239¹ – Public Calls for Violent Actions;
2. Amendment to the Law of Georgia on Broadcasting – New Regulation on Advertising/Sponsorship

PUBLIC CALLS FOR VIOLENT ACTIONS

The amendments proposed by the Ministry of Internal Affairs (MIA) to the Criminal Code of Georgia entered into force on July 13, 2015. Along with other amendments implemented in frames of the anti-terrorist package, Article 239¹ was added to the Criminal Code of Georgia envisaging the criminalization of calls for violent actions. In particular, public calls for violent actions, made verbally, in written or through other forms of expression and aimed to cause hostility or discord between racial, religious, national, regional, ethnic, social, linguistic or/and other groups, if such calls create obvious, direct and substantive threat of violent actions will be punishable with imprisonment.

The attack on the Paris office of a satirical magazine Charlie Hebdo has prompted the initiative. Unfortunately, the Government initiated the bill without broad and inclusive discussions with the society, including vulnerable groups.

Although the bill underwent several amendments, and particularly, it introduced the test of clear, direct and substantive threat, it still contains serious threats in terms of restricting freedom of expression. The

initiative prompted 18 non-governmental organizations, 18 media outlets and 3 media associations to release a joint statement¹, which questions real reasons for adopting the law.

“In light of the fact that the state policy is demonstratively ineffective and, in some cases, even repressive, when it comes to committing hate-motivated crimes, the state is absolutely passive in restoring the violated rights and implementing preventative measures; the truthfulness of the claim that these restrictions of the freedom of expression aim to protect the discriminated groups is extremely low,” the joint statement of non-governmental and media organizations reads.

The statement also focuses on the possibility of broad interpretation and arbitrary use of some terms mentioned in the norm such as “calls for violent actions” and “causing discord between certain groups”. It notes that the presented norm is in conflict with international standards, which regulate the struggle against racism and xenophobia and perceive vulnerable groups as an object of protection against discriminatory and violent treatment, unlike the present model, which offers obscure settlement of discord. According to the authors of the statement, misuse of the norm and its incorrect interpretation by relevant authorities creates the risks of restriction of freedom of expression of media representatives, non-governmental organizations, religious and ethnic groups and political opponents.

A sanction² envisaged by the law to liquidate media outlets and other legal entities was considered disproportionate in terms of development of a democratic state and establishment of an open society.

Another attempt to adopt legislative regulations restricting freedom of expression took place in 2013, when the Ministry of Internal Affairs submitted a bill to the Parliament on making amendments to the Code of Administrative Offences of Georgia, which envisaged making an administrative offense “public expression of hatred against religious organizations, clerics and religious believers, or/and publishing or screening of such material, which aims at insulting religious feelings of believers.” After critical assessments made by local civil society organizations and the Council of Religions under the Public Defender³, the proposal was withdrawn. The repeated attempt took place on February 2, 2016, when the Parliament’s Human Rights and Civil Integration Committees discussed with the first hearing and supported the bill sponsored by MP from GD ruling coalition, Soso Jachviani that sought to make “insult of religious feelings” an administrative offense.

¹ A joint statement released by non-governmental and media organizations, January 26, 2015. http://mdfgeorgia.ge/eng/view_statements/167

² Criminal Code of Georgia, Article 239¹. Public incitement to acts of violence orally, in writing or using other means of expression in order to cause a discord between certain groups based on their racial, religious, national, provincial, ethnic, social, political, linguistic and/or characteristics, provided that this poses clear, direct and substantial risk of acts of violence, shall be punished by a fine or community service from 200 to 400 hours.
2. The same act causing grave bodily injury, death or other grave consequences, shall be punished by imprisonment for a term of two to five years. Note: For the act provided for by this article, a legal person shall be punished by liquidation or with deprivation of the right to carry out a particular activity and with a fine.

³ http://www.tolerantoba.ge/index.php?news_id=506

NEW ADVERTISING REGULATIONS

In late 2014, the Georgian National Communications Commission (GNCC) initiated a package of amendments on advertising/sponsorship to the Law of Georgia on Broadcasting and the Parliament approved the amendments on February 19, 2015, two months after registration (on December 18). Bringing Georgian broadcasting legislation in line with the EU's Audiovisual Media Services Directive (2010/13/EU)⁴ was cited as a reason for implementing the amendments. According to the commission's explanatory note and its annual report for 2014⁵, the key objective of the law is to regulate broadcasting market in Georgia and create equal conditions for market players.

The Rustavi 2 TV management condemned an accelerated adoption of the law as a step against the TV channel and an attempt to exert influence on the market largely due to the following circumstances:

- **Accelerated timeframes:** Georgia undertook to gradually carry out the cooperation in audiovisual and media spheres envisaged by Annex XXXIII of the Association Agreement with EU. In particular, Article 23 of the Directive should have been enacted within five years of the entry into force of this Agreement, and other articles should have entered into force within three years. The Association Agreement was fully enacted on December 24, 2015. Thus, a part of new regulations should be implemented in 2018 and the other part – in 2020.
- **Tightened regulations:** The amendments made to Article 67(3) of the Law of Georgia on Broadcasting envisage much stricter regulation than specified by Directive 2010/13/EU. In particular, according to the amendments to Article 67, which entered into force from January 15, 2016, “direct calls for purchasing, supplying and consuming goods and services, particularly by making special references to those goods and/or services shall be inadmissible during sponsorship.” According to paragraph “b” of Article 10 of the directive, audiovisual media services or programmes that are sponsored shall meet the following requirements: (b) they shall not directly encourage the purchase or rental of goods or services. The directive focuses only on programs, while the Georgian version widens this limitation, as the term “during sponsorship” covers the references to the sponsor's goods and services, as well as sponsored programs, sponsored announcements, sponsored advertisements, etc.

⁴ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:095:0001:0024:en:PDF>

⁵ The 2014 report of the Georgian National Communications Commission; p. 19 <http://www.gncc.ge/uploads/other/1/1344.pdf>

When assessing the financial and business environment, one should highlight several issues from the year 2015: 1) the impact of new advertising regulations on the market, which were introduced by amending the Law on Broadcasting; 2) the entry of the market by a new television audience measurement company; 3) the practice of allocating budgetary means to media outlets; and 4) the tax inspection of the media outlet.

This section discusses the above mentioned four issues.

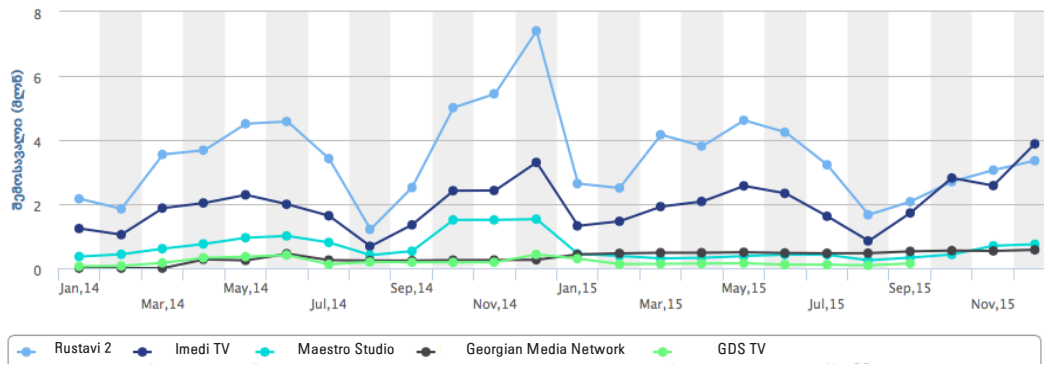
1.1. THE IMPACT OF NEW ADVERTISING REGULATIONS ON THE MARKET

According to the information published on the webpage of the Georgian National Communications Commission (GNCC), which reflects the data as of 1 March, the TV advertisement market decreased by 10,3 million GEL in 2015 compared to the previous year. In 2014, the TV broadcast revenues comprised 94,6 million GEL while the corresponding indicator of 2015 stood at 84,3 million GEL.

The comparison of the two years data by TV companies showed (Diagram 2.1.) the increase in the revenues of only the Georgian Media Network¹ (by 3,5 million GEL) and the Imedi TV Company (by 2,9 million GEL). The revenues of Georgian Media Network mainly increased owing to the sale of content (4,9 million GEL), with the share of advertisement being relatively small, whereas in case of Imedi TV, the main source of income was TV advertising (23,7 million GEL) the largest portion of which was generated in the fourth quarter. Among other TV companies that led the advertisement market in 2014, the decrease was seen in the revenues of Rustavi 2 by 7,3 million GEL, Maestro by 5,3 million GEL, and GDS by 788 111 GEL. It should be noted that the GDS TV company had delay in reporting the data of the fourth quarter to GNCC.

¹ Georgian Media Network is a subsidiary of Silknet. Its founders are Global Media Group LLC – GMG (15%) and JSC Silknet (85%). Silknet purchased six GMG channels with the rights to broadcast programs.

Diagram 2.1. TV media revenues by five broadcasters, 2014–2015

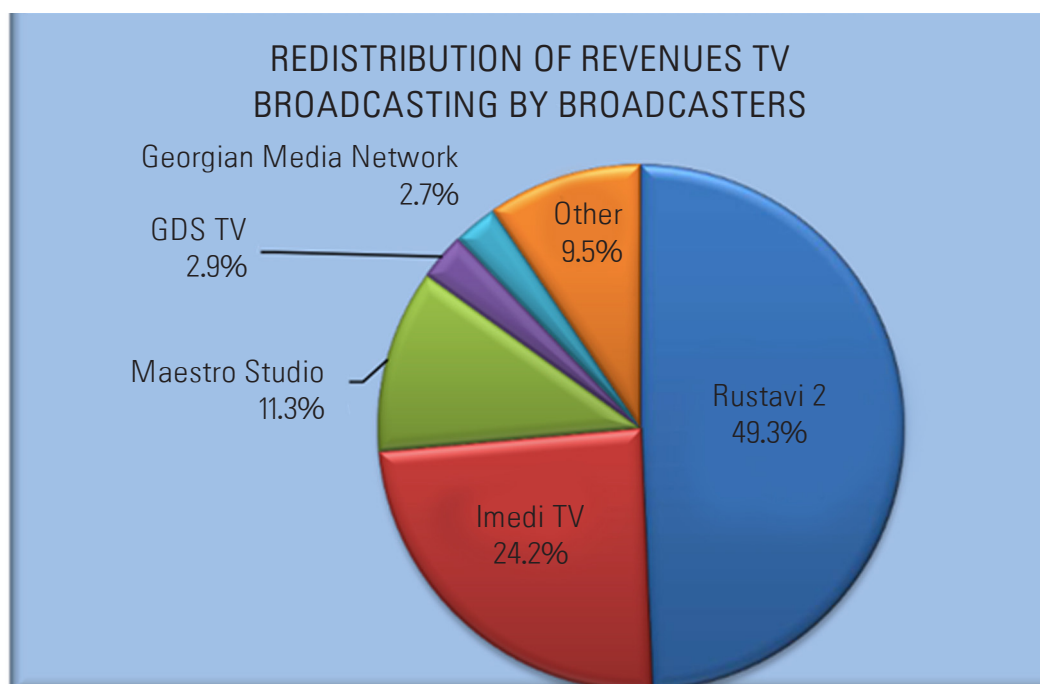


Broadcast company	2014	2015
Rustavi 2	45,332,691.82	38,043,088
Imedi TV	22,282,790.54	25,148,484
Maestro Studio	10,400,391.45	5,123,105
Georgian Media Network	2,459,360.23	5,942,532.10
GDS TV	2,676,358.52	1,888,244.98

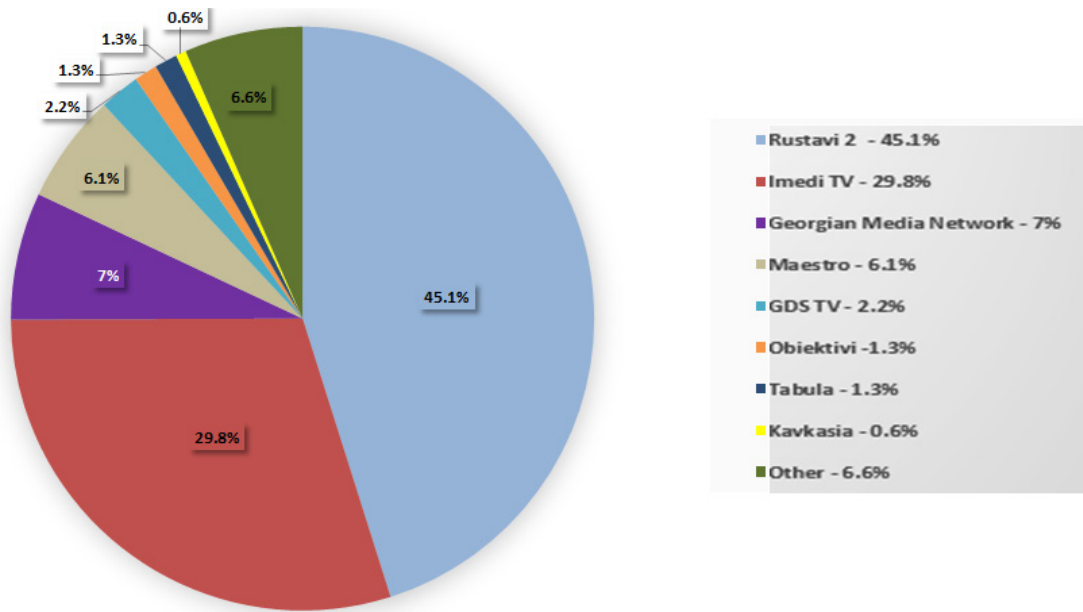
As regards the redistribution of commercial advertisements among TV companies, in 2015, much like in 2014, the leader on the market was Rustavi 2 with 45.1% share of the entire market, followed by Imedi TV with the share at 29.8%, Georgian Media Network at 7%, Maestro at 6.1%, GDS at 1.6%, Obiektivi at 1.3%, Tabula at 1.3%, Kavkasia at 0.6%, and other TV channels at 6.6%.

Diagram 2.2 TV revenues by media outlets in 2014 and 2015

2014



2015



As the comparison of two year data shows, in 2015, the advertisement revenues improved for Imedi TV whilst the revenues from the sale of contents increased for the Georgian Media Network.

2.2. THE ENTRY OF THE MARKET BY A NEW TELEVISION AUDIENCE MEASUREMENT COMPANY

Beginning in 2016, the TV ratings market saw the entry of a new television audience measurement company, Tri Media Intelligence, which is an official licensee of the international company Kantar Media. Before that, since 2005, the television audience was measured by the single company TVMR Georgia which is an official licensee of the international company Nielsen. The TVMR Georgia caught public attention in February 2014, when the Revenue Service entered it to conduct the tax inspection. That move was harshly criticized by nongovernmental organizations as they saw in it an attempt to redistribute the advertisement market.

Clients of television audience measurement companies are TV channels as well as advertisement agencies and media sellers. TV companies need viewer ratings to schedule their programs accordingly and attract commercials whilst advertisement agencies and media sellers need them to place commercials according to the ratings.

Of those 13 TV channels that were the clients of TVMR only seven continue to use its service today. These TV channels are: Rustavi 2, Kavkasia, Tabula, Comedy Channel, Marao, TV Pirveli and Music Box. The clients of TVMR also include one media seller and 16 advertisement agencies. The number of advertisement agencies using the service of the company decreased only by two.

As regards the new company, Tri Media Intelligence, no official information is available about their clients; the webpage we were pointed to visit, is not operational yet. What is known for sure is that the Tri

Media Intelligence emerged as the winner in the tender announced by the Georgian Public Broadcaster for the measurement of its audience and that the tender requirements of the broadcaster differed from those in previous years. Also, according to media reports, Imedi TV, GDS TV and Maestro also started receiving the service of Tri Media Intelligence from 2016.

Tri Media Intelligence was registered in the National Agency of Public Registry on 13 October 2014; in the same month, it made the announcement about its entry of the market as a licensee of international company Kantar Media. Co-owners of the company with 50%-50% shares are Merab Pachulia and Giorgi Tevdorashvili. Merab Pachulia, for his part, owns 70% of shares in the Georgian Opinion Research Business International, GORBI, a public opinion and market research firm.

Several media outlets have raised questions regarding the transparency of funding of Tri Media Intelligence and saw links between the company and the former Prime Minister, Bidzina Ivanishvili.² Questions are also raised about the conflict of interests of a co-founder Giorgi Tevdorashvili who owns shares in companies falling within the Palitra Holding (IPN – 12%, Elva.ge – 25%, Biblus – 10%). The Palitra Holding includes Palitraneews TV company (Palitra TV LLC) which gives rise to the conflict of interest. Giorgi Tevdorashvili denies the conflict of interest claiming that he does not own shares in the TV channel.

TVMR Georgia is an official licensee of Nielsen Television Audience Measurement. TVMR Georgia was established in 2004 and since 2005, it has been measuring television audience in Georgia. The director of TVMR Georgia is Nino Gogoladze whilst the owner of 100% of shares of the company is the Commandite Society TVMR registered in the United Kingdom of Great Britain and Northern Ireland.

TVMR Georgia LLC and Gocha Tskitishvili, for their part, own 50%-50% of shares in IPM Monitoring LLC. Nino Gogoladze is the director of this company too. Gocha Tskitishvili also owns 100% of the shares of Media Monitoring LLC.

In February 2014, the Revenue Service of the Finance Ministry of Georgia launched the inspection of TVMR Georgia and demanded that the company disclose the names of those 330 households and their addresses where people meters were installed. TVMR Georgia refused to provide the data on the ground that the information was confidential and its disclosure would undermine trustworthiness and damage the ranking of the rating company. Following this refusal, the Revenue Service started the audit of TVMR Georgia's assets. On 20 March 2014, TVMR Georgia suspended its operation claiming that the audit was interfering with the operation of the company. Five nongovernmental organizations criticized the activity of the Revenue Service in a joint statement released on 18 March. The NGOs noted that the disclosure of identities of the families where people meters were installed could affect TV ratings and distort the

² New Company to Enter TV Rating Market in 2016, The Media Development Foundation, 7 December 2015, http://mdfgeorgia.ge/geoview_news/411

data which might result from self-censorship of households involved in the audience measurement. In this regard, five TV companies and more than 10 advertisement agencies also released a joint statement emphasizing the threat of harming the TV commercial market of the country. Over the period from 24 February to 3 March, the Revenue Service filed three motions with the court for obtaining confidential information from TVMR Georgia. The court, however, rejected the motions. This fact even made it into the US Department of State's Country Report on Human Rights Practices for 2014.

3.3. THE PRACTICE OF ALLOCATING BUDGETARY MEANS TO MEDIA OUTLETS

Neither the government nor any of its institutional units has developed a rule on how and by what criteria to redistribute the budgetary advertisement among media. Only several ministries indicate in the contracts the obligation with regard to television ratings and reach of audience.

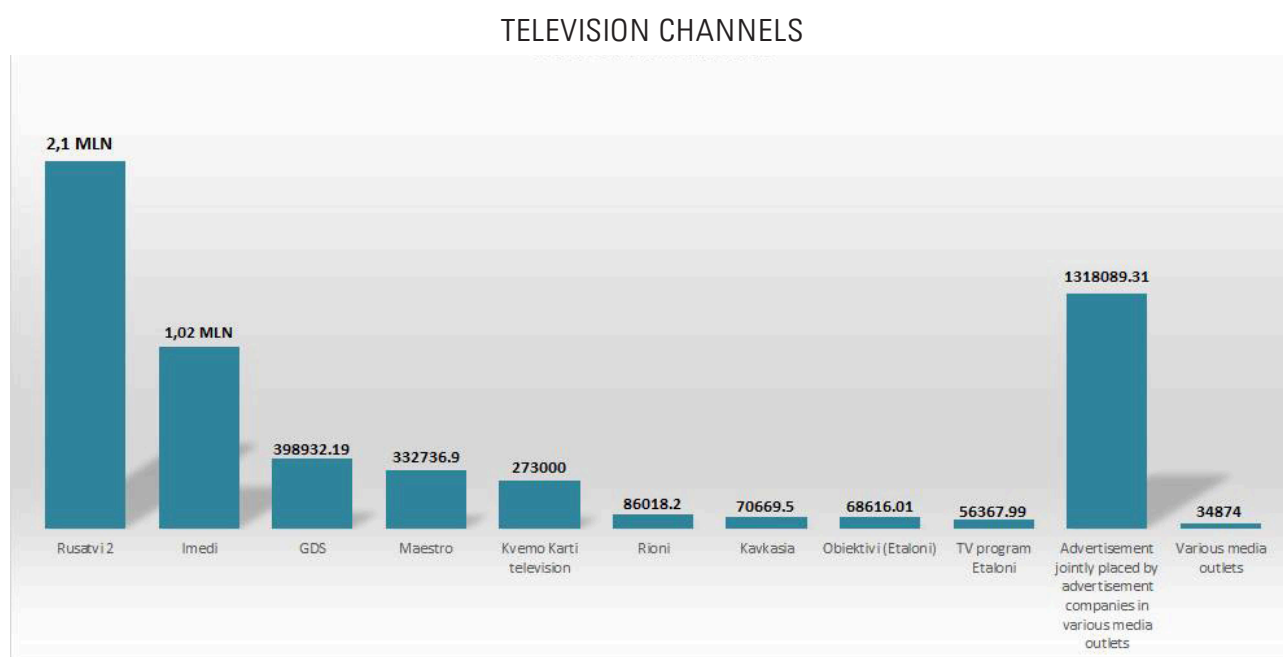
In 2015, the budgetary organizations transferred 7,173,955 GEL countrywide for the provision of advertisement and information service by media. This figure includes the data supplied by the Government Chancellery, several ministries, legal persons in public law and other subordinate organizations. Since a number of legal persons in public law and joint stock companies refused to provide the data, the above cited figure does not reflect the full amount.

As many as 79.8% of the above mentioned amount is spent on advertisement in TV channels, 12.2% in online media, 6.3% in newspapers, 0.8% in radio and 0.9% various media outlets under mixed contracts.

The largest share of television advertisement, 2,1 million GEL, accounts for Rusatvi 2, which is followed by Imedi at 1,02 million GEL, GDS at 398,932.21 GEL, Maestro 332 736.9 GEL, Kvemo Karti television at 273,000 GEL, Rioni at 86,018.2 GEL, Kavkasia at 70,669.5 GEL, Obiektivi (Etaloni) at 68,616.01 GEL, TV program Etaloni at 56,367.99 GEL, various media outlets at 34,874 GEL, advertisement jointly placed by advertisement companies in various TV Channels stand at 1,318,089.31 GEL. It is worth noting that some contracts did not provide a breakdown of amounts by media outlets (Rusatvi 2, Imedi, Maestro, GDS, Kavkasia, as well as 17 regional TV channels) and one contract³ does not allow to identify TV companies at all.

³ Public Funds for Media Promoting Hate Speech and Anti-Western Sentiments, the Media development Foundation, 2015. <http://mdfgeorgia.ge/uploads/Report%20on%20Obiektivi%20&%20others,%20Eng.pdf>

Diagram 2.3. The redistribution of budgetary advertisement among TV channels, 2015

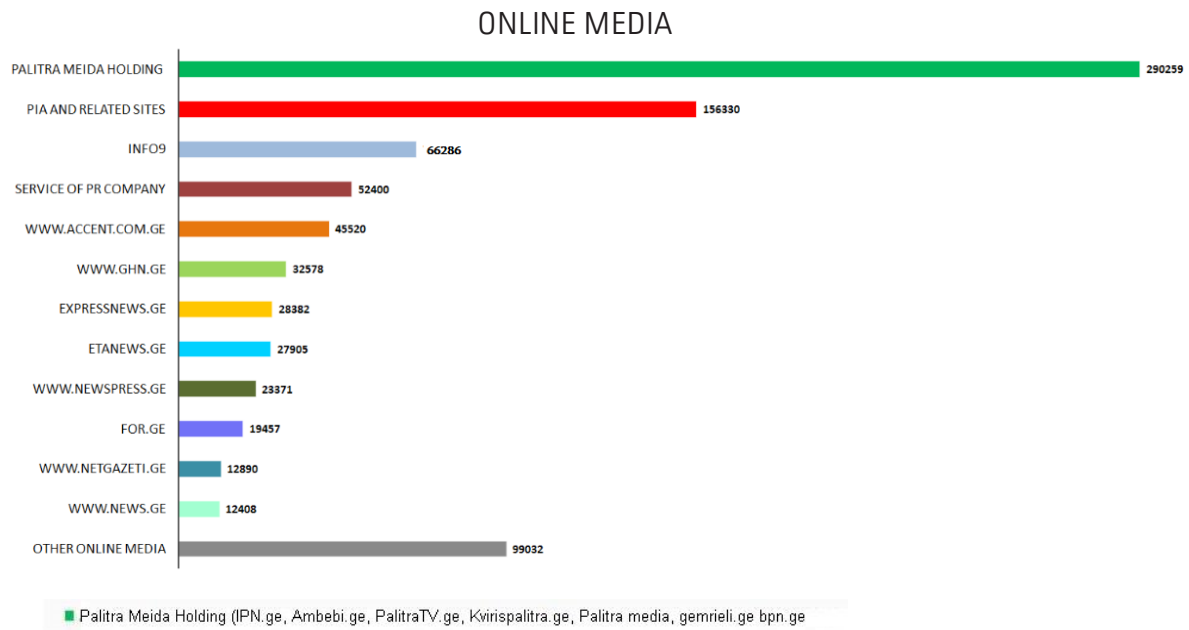


The advertisement amount redistributed among various radio channels:

Radio Channels	Amount
Dzveli Kalaki	19350
Adjara TV and radio of Georgian Public Broadcaster	17100
Radio Fortuna	12834
Radio Imedi	7143
Radio Maestro	2988
Pirveli Radio	1596

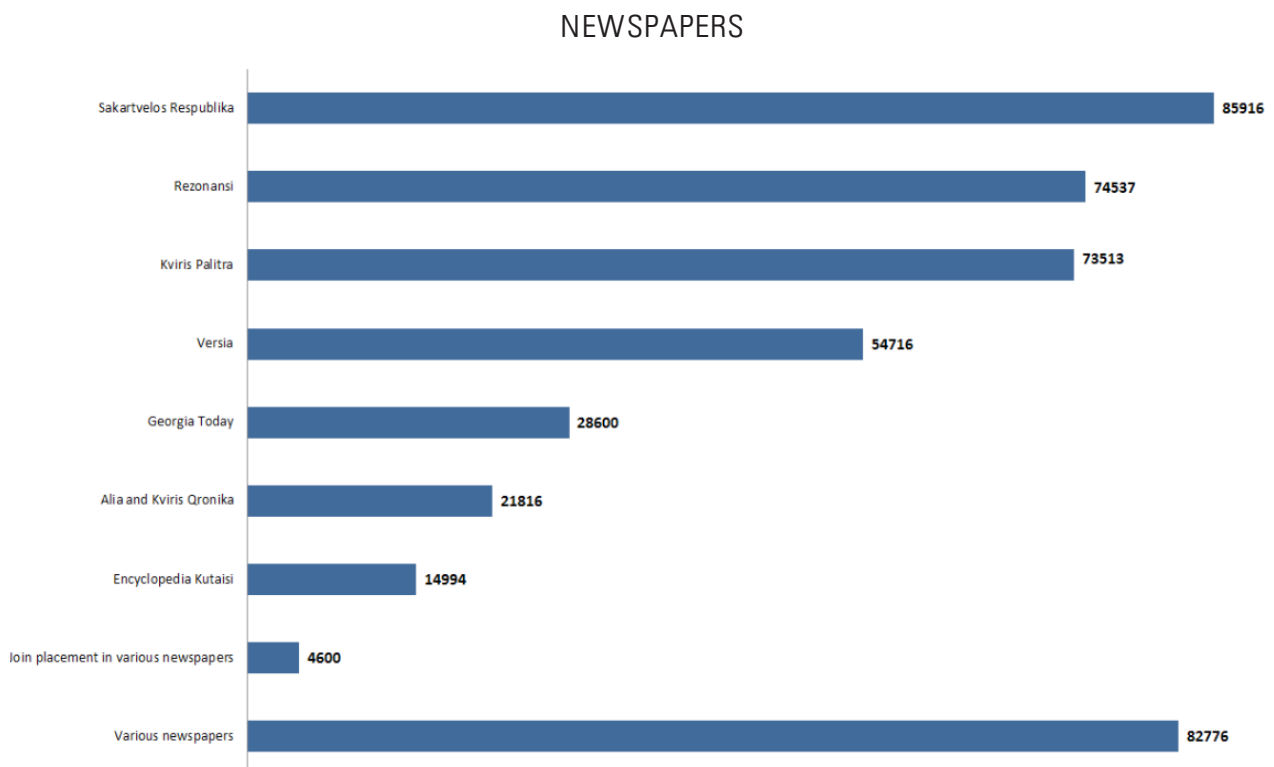
As regards online media, the leader is Palitra Meida Holding (IPN, PalitraTV.ge, Kvirispalitra.ge, bpn.ge, Ambebi.ge, gemrieli.ge) with 290,259 GEL, followed by PiA and related editions Daijesti.ge, rubrica.ge, funtime.ge at 156,339 GEL, Info9 at 66,286 GEL, IPM (placement of information in news agencies) at 52,400 GEL, accent.com.ge at 45,520 GEL, GHN at 32,578 GEL, Exclusivenews (EPN) at 28,382 GEL, etanews.ge at 27,905 GEL, newspress.ge – 23,371 GEL, for.ge at 19,457 GEL, netgazeti.ge at 12,890 GEL, news.ge at 12,408.3 GEL, various at 99,032 GEL.

Diagram 2.4. The redistribution of budgetary advertisement among online media, 2015



Among print media, the largest amount, 85,915.5 GEL, was transferred to Sakartvelos Respublika, followed by Rezonansi with 74,536.92 GEL, Kviris Palitra with 73,513.17 GEL, Versia with 54,716 GEL, Georgia Today with 28,600 GEL, Alia and Kviris Qronika with 21,815.6 GEL, Encyclopedia Kutaisi with 14,994 GEL, and others with 82,776 GEL.

Diagram 2.5. The redistribution of budgetary advertisement among print media, 2015



It is worth noting that separate entities of the Georgian government continue to sign service contracts with such media outlets that incite hatred and anti-Western sentiments. Such outlets are:

Media outlet	Contract amount (in GEL)
Sakartvelos Respublika	74536.92
Obiektivi (Etaloni)	68616.01
Alia and Kviris Qronika	21815.6
newspress.ge ⁴	23371
Exclusivenews ⁵	4730
Asaval-Dasavali	2 500

It is worth noting that material promoting the report on a three-year performance of the government of Georgia was placed in Asaval-Dasavai newspaper on the basis of the decree #2552 of the government of Georgia, dated 27 November 2015. The contract with Exclusivenews was signed by the Security Police of the Ministry of Internal Affairs.

A report of the Media Development Foundation,⁶ published in 2015, places an emphasis on the Recommendations #7 of the European Commission against Racism and Intolerance (ECRI) which calls on the state parties to develop such regulations that would make the award of contracts conditional on the implementation of antidiscrimination policy and would prevent the state from entering into financial relations with such organizations that incite hatred.

It is also worth noting that The Georgian National Communications Commission exercises selective approach towards certain media outlets. For example, the sponsorship of TV program Etaloni, aired on Obiektivi TV channel, was carried out in violation of the Law on Broadcasting. In particular, Article 66 of the Law prohibits the financing of TV programs by administrative entities. On 31 July 2015, the Media Development Foundations applied to the GNCC with the request to inquire into this case. Seven months have passed since then but the GNCC has not reacted to this issue. For an identical violation, however, the GNCC imposed an administrative sanction on the Georgian Public Broadcaster on 26 March 2015.

1.4. TAX INSPECTION OF THE REGIONAL MEDIA OUTLET

The local edition Chemi Kharagauli published a video material recorded on the meeting of the bureau of city council of Kharagauli municipality.⁷ The 20-minute video features the conversation between local self-government representatives and the editor of the newspaper, Laura Gogoladze.

⁴ Kviris Kronika: "Political faggot Kaladze tries to instill opinion into us that gay pride will still be held," 4 May 2015, <http://bit.ly/1Tr5P5l>

⁵ "Vashadze' brother got married," 18 August 2014. <http://www.exclusivenews.ge/?page=view&artid=6363>

⁶ Public Funds for Media Promoting Hate Speech and Anti-Western Sentiments, the Media development Foundation, 2015. <http://mdfgeorgia.ge/uploads/Report%20on%20Obiektivi%20&%20others,%20Eng.pdf>

⁷ Chemi Kharagauli newspaper, 6 October 2015. <http://chemikharagauli.com/?p=8004#.VrhkD7QxGgR>

In this video, the Head of Kharagauli municipality, Koba Lursmanashvili, and the chairman of the city council faction Georgian Dream–Democratic Georgia, Varlam (Tato) Tavzarashvili, were accusing Chemi Kharagauli newspaper of bias. To the request of Chemi Kharagauli editor, Laura Gogoladze, to name concrete articles which, in their opinion, were biased, the head of municipality named a letter published on 12 June 2014 while the chairman of the faction named information published on 26 June 2013. The head of municipality and the chairman of the faction were openly expressing their dissatisfaction with the editorial policy. At the same time, the founders of the newspaper were bringing as an example Akhali Kharagauli newspaper which received various budget funding from the local government because of its loyalty to the government.

After the publication of the video, the tax inspection was launched in Chemi Kharagauli newspaper which continued for several months. Chemi Kharagauli was fined for the improper fulfillment of certain tax liabilities, but the newspaper appealed the sanction with the dispute resolution council which cancelled some of fines but not all. To achieve the cancellation of remaining fines, the newspaper continues the dispute.

Power transition in Georgia and its effect on media environment was an important indicator in terms of Georgia's democratic development following the 2012 parliamentary elections. It is worth noting that following the elections, Imedi and Iberia TV channels were returned to their previous owners. Moreover, not a single media outlet has disappeared from the market, except Channel 9, which was the property of then Prime Minister Bidzina Ivanishvili's family and was closed of its own accord eight months after the elections.

However, with the 2016 parliamentary elections looming, some ownership disputes have erupted creating an impression that the ongoing developments were related to an attempt of media market redistribution ahead of elections. In 2015 two ownership disputes erupted with respect to Rustavi 2 and Maestro TV channels.

3.1. RUSTAVI 2 TV CASE

Rustavi 2 TV, which before the 2012 parliamentary elections pursued the pro-government editorial policy and subsequently turned into a media outlet critical of the authorities following the elections, with the Rustavi 2 TV management numerously declaring about it, became the object of special observation in 2015.

Top officials were constantly expressing their discontent with the channel's editorial policy and were accusing the TV channel of bias in favor of the formerly pro-governmental and now opposition National Movement party. They were frequently pointing at the TV channel's ownership issue.

Ex-Prime Minister Bidzina Ivanishvili, who was frequently slammed by a number of local or international observers for his informal rule, was especially critical towards Rustavi 2 TV. Ivanishvili expressed hope for multiple times that the rules of the game would have changed on media market. When announcing about a new TV talk-show called "2030" to be aired by GDS (Georgian Dream Studio), Tbilisi-based television channel owned by his son Bera, Ivanishvili said that the new talk-show will help the society "see

developments correctly” in a media landscape, where UNM party and its “propaganda and lie machine” Rustavi 2 TV are still setting the agenda.

Bidzina Ivanishvili said: **“UNM’s propaganda machine of lies, Rustavi 2 TV, is unfortunately dominating in the media space; other media outlets are also backing it, making it very difficult for the population to understand what is going on. I think that this project and 2030’s daily programs will make it possible to provide balanced analysis and correct accents, which is so needed for the society... the population should have a clear understanding about the elections, whom they can support and so on. Media analysis plays a huge role in it. And this project [2030 TV program] just aims at offering a qualified analysis to the population that will help them make a good choice during the elections”¹.**

In the interview with Imedi TV, Energy Minister and Deputy Prime Minister Kakha Kaladze expressed hope that Rustavi 2 TV would be returned to its real owner, and on May 11, 2014, he promised the population “to put an end” to Rustavi 2 TV:

Kakha Kaladze: **“It is very bad that Rustavi 2 TV still continues its nine-year shameful activity and propaganda of dirtiness. It should be ended once and forever in this country and we promise the population of our country that it will definitely come to an end”².**

Amid numerous public statements made by the government against Rustavi 2 TV, it was highly anticipated that certain steps would be taken against the TV channel. The entry of the Finance Ministry’s Revenue Service into TVMR GE, the only television viewership measurement company in Georgia, in late 2013 and accelerated adoption of new advertising regulations to the Law on Broadcasting was condemned by the Rustavi 2 TV management as an act directed against the TV channel and an attempt of market redistribution³. Legal proceedings related to ownership dispute were launched against the TV channel in August 2015, a year before the parliamentary elections.

Rustavi 2 TV Owners

On August 4, 2015 Kibar Khalvashi and his company Panorama Ltd filed a lawsuit against Rustavi 2 TV in the Tbilisi City Court. The claimants were reclaiming ownership of the broadcaster. Kibar Khalvashi was a majority shareholder of Rustavi 2 TV in 2004–2006. According to the report of Transparency International Georgia⁴, on June 16, 2004, Paata Karsanidze, a businessman with no public profile, bought 60% of

¹ Media.ge, March 16, 2015. <http://www.media.ge/ge/portal/news/303517/>

² <http://rustavi2.com/ka/news/23857>

³ Media.ge, March 19, <http://www.media.ge/ge/portal/news/302383/>

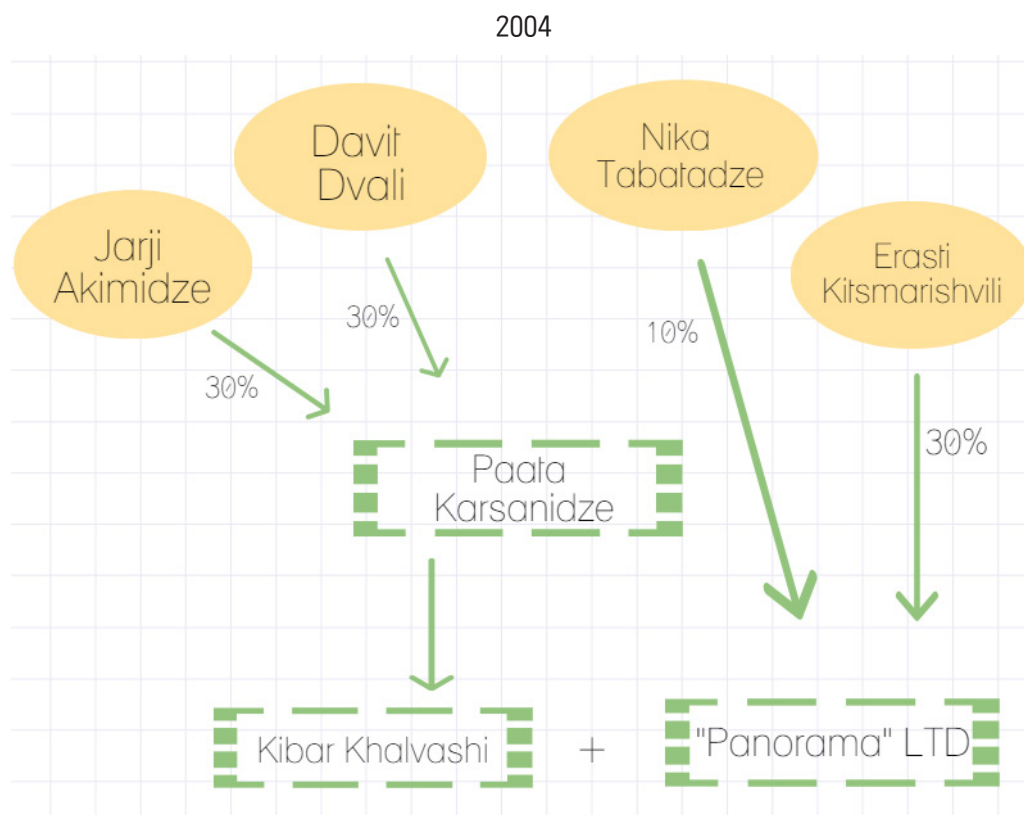
⁴ The TV Station of ‘Victorious People’: The Story of Rustavi 2, <http://www.transparency.ge/en/blog/tv-station-%E2%80%98victorious-people-story-rustavi-2>

the debt-stricken Rustavi 2 (30% from Davit Dvali and 30% from Jarji Akimidze) only to sell his shares to Kibar Khalvashi the same day. Khalvashi's company, Panorama Ltd, also acquired Nika Tabatadze's 10% of shares in Rustavi 2 and Erosi Kitsmarishvili's 30% of shares.

In that period Kibar Khalvashi was a friend of Defense Minister Irakli Okruashvili. In December 2005, Sak-Cementi acquired 22% of Rustavi 2 from Khalvashi's company Panorama. Robert Bezhuashvili, father of Davit Bezhuashvili of the National Movement and Gela Bezhuashvili, the Foreign Minister in 2004–2008, held 100% of SakCementi. Later in 2006, after Irakli Okruashvili resigned from the Economy Minister's position, Kibar Khalvashi and his Panorama Ltd sold 78% of shares to GeoTrans Ltd.

Kibar Khalvashi, whose sister Pati Khalvashi has been a lawmaker from the GD ruling coalition since 2012, claims that he was coerced into selling of shares and the price for which he had to sell his shares was in fact far lower than actual value of the asset. In addition, Khalvashi claims⁵ that in case of winning the lawsuit, he will return 50% of shares to two co-owners of the TV channel – Jarji Akimidze and Davit Dvali. Kibar Khalvashi bought a 60% share from these persons in 2004 through a physical person, Paata Karsanidze. In turn, following the 2012 parliamentary elections Jarji Akimidze and Davit Dvali also claimed the ownership⁶ saying that despite preliminary statements they have not applied to the court.

Chart 1. Buying the shares of Rustavi 2 by Kibar Khalvashi and Panorama Ltd in 2004



⁵ Radio Liberty, November 6, 2015, <http://www.radiotavisupleba.ge/content/droebiti-mmartveloba-rustavi-2-shi/27348837.html>

⁶ Media.ge, October 5, 2012. <http://www.media.ge/ge/portal/news/50277/>

Erosi Kitsmarishvili, the third founder and former owner of Rustavi 2 TV, also reclaimed his shares during a press conference in 2012. He said that Rustavi 2 ownership dispute could not have bypassed him⁷.

Erosi Kitsmarishvili said: **“I want to tell Ivanishvili to look into my eyes when he talks about Rustavi 2 because both of us know a lot of things and if those things are disclosed, many people will suffer. I also call on him, if, as he said, Kibar Khalvashi and he know something that I do not know, he should either say what he knows or keep silence forever.”**

On July 15, 2014 Erosi Kitsmarishvili was found dead in his own car. The investigation, which is still ongoing, treats the death as a suicide, but Kitsmarishvili’s family questions a suicide version and indicates at doubtful circumstances.

Rustavi 2 TV was founded in 1994 by Erosi Kitsmarishvili, Jarji Akimidze and Davit Dvali. Since November 2012 the TV channel has been owned by brothers, Giorgi and Levan Karamanishvili. Levan Karamanishvili owns 22% of shares and Giorgi Karamanishvili – 18%. 51% of Rustavi 2 TV is owned by TV Company Georgia, where Levan Karamanishvili owns 60% of shares and 40% belongs to Giorgi Karamanishvili. The remaining 9% belongs to Giorgi Gegeshidze. One of the owners of the TV channel, Levan Karamanishvili is also an owner of the shares in a mobile operator Beeline.

During 2004–2012 Rustavi 2 TV changed hands 20 times and non-governmental organizations have voiced much criticism about non-transparent nature of the entire process⁸.

Procedural History of the Dispute

Asset Freezing

Kibar Khalvashi filed a lawsuit in the Tbilisi City Court on August 5, 2015 seeking to claim back his shares in the broadcaster. Four days later, on August 8, the court heard the motion without oral hearing and ordered asset and account freeze, which banned Rustavi 2 TV’s current shareholders to sell shares, as well as to sell or rent out broadcast equipment, vehicles and other property owned by the company; executive powers of its general director and chief financial officer were also limited.

The non-governmental organizations slammed the August 8 court ruling as lacking substantiation and being unjustified⁹. In particular, the ruling fails to meet the standard of reasonable assumption and caus-

⁷ December 25, 2012. <http://geonews.ge/geo/news/story/34226-erosi-kiwmarishvili>

⁸ The TV Station of ‘Victorious People’: The Story of Rustavi 2, August 2, 2013, Transparency International Georgia, <http://www.transparency.ge/en/blog/tv-station-%E2%80%98victorious-people-story-rustavi-2>

⁹ NGOs respond to the Rustavi 2 asset freeze; August 10, 2015. <http://www.transparency.ge/en/post/general-announcement/ngos-respond-rustavi2-asset-freeze>

es disproportionate restriction of right; when applying the measure to secure the claim, the court did not refer to the circumstances indicated by the claimant; the court did not deliberate on obligating the claimant to provide certain security to appropriately compensate the damage that the defendant may incur as a result of application of the measure to secure the claim.

In addition, public interests in freedom of media, freedom of speech and expression, rights to receive and disseminate information are very important in the case, since their partial restriction will irreversibly be caused by claim security measures. Thus, the court should have considered the balance between these interests and the claimant's property right. The court created technical and financial difficulties to full-fledged functioning of the influential TV channel, restricted the management's executive powers and significantly damaged the interest of freedom of expression without substantiating what the objective of such decision was.

OSCE Representative on Freedom of the Media, Dunja Mijatović, said that “disproportionate and excessive” court order to freeze Tbilisi-based Rustavi 2 TV's assets in a dispute over the broadcaster's ownership may pose a threat to free media and media pluralism¹⁰.

Rustavi 2 TV appealed against the court ruling. It was noted in the request on annulling the measure to secure the claim that asset freeze would create problems to the liquidity of the company's cash assets. In particular, the TV channel would lack an opportunity to get prepared for new programs. According to the authors of the lawsuit, the court actually did not clarify whether there were any real threats of alienating the property designed to secure the claim or reducing its value. In addition, the principle of proportionality was violated; in particular, the cost of disputable property, which was subject to securing measures, was 40 times more than those claim requirements, which might have become the basis for securing measures. This request was also rejected by the Tbilisi City Court on September 14, 2015.

On October 1, 2015 the court ordered to freeze 100% of shares of TV Company Georgia upon Kibar Khalvashi's request, citing an intention to sell the shares of this company. According to the data available at the public registry, Levan and Giorgi Karamanishvili, who own 100% of shares, planned to sell the TV Company Georgia to Dimitri Chikovani, brother-in-law of Davit Kezerashvili, the former Defense Minister at USD 400 000. The latter vowed to invest USD 6 million in Rustavi 2 TV.

Recusal of the Judge and Request to Hear the Case by the Panel of Judges

Rustavi 2 TV lawyers filed a motion for recusal of Judge Tamaz Urtmelidze twice; the TV channel also demanded that the case be heard by a three-member panel of judges. The both motions were rejected.

¹⁰ Civil.ge, August 11, 2015, <http://www.civil.ge/eng/article.php?id=28492>

The respondent's motion for recusal of the judge was based on two main arguments. The one was a criminal case that was filed just recently against Judge Tamaz Urtmelidze's mother. Another one was related to several negative comments posted by the judge's wife on her Facebook account about Rustavi 2 TV and its chief executive Nika Gvaramia.

On October 12, 2015 the prosecutor's office filed criminal charges against Judge Urtmelidze's mother in connection with a domestic incident that occurred on January 7, 2014 and that involved inflicting minor bodily injuries to her son-in-law. Filing criminal charges a year and nine months after the incident prompted allegations that the authorities wanted to exert pressure on the judge using possible prosecution of his mother.

On September 14, 2015, the Tbilisi City Court rejected the motion to hear the case by the panel of judges. Rustavi 2 TV claimed that the dispute was politicized that was confirmed by open discontent expressed by top officials and attempts to exert pressure on the company. In addition, the case was characterized by both factual and legal complexities that created the basis for hearing the case by the panel of judges.

According to Georgian legislation, the judge who hears the case alone may determine that the case is to be heard by a panel of three judges, if: a) the hearing and resolution of the case is essential to judicial practice; b) the case is especially complex in its factual or legal aspects.

The authors of the motion claimed that incorrect decision might have created problems to the channel's smooth operation and would have affected the quality of freedom of expression in the country. When substantiating his refusal, Judge Urtmelidze explained that although a media outlet was a respondent, the legality of ownership of intellectual and property wealth represented the subject of dispute that is a narrow explanation of the issue, because the issues of media ownership is directly linked with the medium's editorial policy. The judge rejected the ruling citing reviewing of the issue within reasonable timeframe that is an irrelevant argument with respect to the issue of high public interest. Hasty hearing of the Rustavi 2 TV case in the court of first instance (3 months) raised additional questions about the entire process. In addition, hearing of the case by the panel of judges would have ensured distribution of responsibilities among the judges and would have increased trust towards the court ruling.

Constitutional Lawsuit

On October 26, Rustavi 2 TV lodged a complaint with the Constitutional Court, in which the claimants questioned subparagraph "g" of part 1 of article 268 of the Civil Procedure Code of Georgia, according to which at the request of the parties, the court may, in full or in part, order immediate enforcement of decisions on "all other matters, if the delay of enforcement of the decision caused by extraordinary circumstances may inflict substantial damage to the party requesting payment, or if the delay may make the enforce-

ment impossible.” In other words, based on this article, legal implications of court ruling may be enforced before expiration of the term of appealing against the decision in higher instance.

Lawyers of Rustavi 2 TV pointed at shortcomings in the clause on immediate enforcement of a decision and demanded to abolish those articles, which the court would apparently use in case of satisfying the lawsuit on ownership dispute.

The Constitutional Court ordered on November 2 a temporary suspension of the application of a clause in Georgia’s civil procedure code, which allows a court of first instance to order an immediate enforcement of a decision even if the verdict is appealed.

The Constitutional Court supposed that in this particular case, a disputable norm might cause irreversible violation of a claimant’s right and it would be impossible to rectify the consequences even in case of recognizing the norm unconstitutional.

Court Appoints Temporary Managers

On November 3, three months after filing a lawsuit, Judge Tamaz Urtmelidze satisfied Kibar Khalvashi’s lawsuit. According to the court ruling, 60% of shares in the TV channel were returned to Kibar Khalvashi and 40% – to Panorama Ltd, also belonging to Kibar Khalvashi. In addition, the judge annulled the purchase agreements concluded by Khalvashi coercing the latter to give up his shares in Rustavi 2 TV.

Since the Constitutional Court suspended immediate enforcement norms, the respondent and Rustavi 2 TV decided to move the case to higher instance court supposing that the claimant would not be able to receive property in factual ownership. But on November 5, Judge Urtmelidze signed the judgment on enforcement of the ruling, according to which temporarily management was appointed in the TV channel replacing the broadcaster’s current managers. Revaz Sakevarishvili, a former chief executive of Tbilisi-based Imedi TV, and Davit Dvali, former co-owner of Rustavi 2 TV, were appointed as temporary managers.

Despite suspension of immediate enforcement norms, the court relied upon Article 271 of Civil Procedure Code of Georgia and by this it actually came into conflict with the goal with which the Constitutional Court suspended immediate enforcement article.

The court ruling was problematic because of two important factors: 1) interference with editorial independence; 2) conflict of interests of temporary managers.

The court ruling notes the following: **“During the coverage of information related to the issues of public interest, the method of objective and fair reporting should be used. Under the management**

of the defendant (Broadcasting Company Rustavi 2 Ltd., Partners), this issue is questionable. Neglect of the indicated purposes consequentially jeopardizes the fundamental purpose of media in a democratic society.”

By such assumptions, the court has gone beyond the ownership dispute and interfered with the editorial policy of a media outlet. The court touched the issues of impartiality and fairness that not only did not represent the subject of dispute, but generally it is not the issue that under Georgian legislation should be discussed by court.

In addition, according to the judge’s order, temporary managers of the Rustavi 2 TV, among other executive powers, will also have the right to carry out the broadcaster’s staffing policy and reorganization, as well as to control its programming. This latter, along with “impartiality test” offered by the court, enabled temporary managers to change the channel’s editorial policy through dismissing the TV channel’s editorial team or its separate members.

Besides the fact that Georgian legislation does not recognize the institute of a temporary manager under the norms relevant to a particular dispute, the court itself questioned those criteria, under which the temporary managers were appointed.

The court noted in its ruling that “a temporary manager shall be a neutral, independent person, who will not be directly involved in the dispute and will have no personal ownership interests towards the subject of dispute; the primary and major goal of temporary managers is to protect and preserve the property in the course of a dispute.”

By the ruling released on November 5, the judge appointed Revaz Sakevarishvili, a former chief executive of Tbilisi-based Imedi TV, and Davit Dvali, former co-owner of Rustavi 2 TV, as temporary managers. As it was confirmed later at a press conference, a verbal agreement was reached between Khalvashi and Dvali on redistribution of shares in case of winning the court case by Khalvashi. Thus, it is beyond any doubt that the temporary managers fail to meet the criteria set by the court.

Local and International Reactions

Rustavi 2 TV learnt about the decision on the appointment of temporary managers from the public registry’s website, where it was posted at 5:45pm on November 5. There was a high probability of enforcement of this decision during non-work hours. Therefore, round-the-clock protest rallies were launched outside Rustavi 2 TV’s headquarters. A part of the society claimed that they were ready to resist the enforcement of the court ruling.

A group of non-governmental organizations¹¹ condemned the ruling as “a clear violation of the fundamental rights of a fair trial and access to court”, as well as “intervention in the editorial policy of an independent broadcasting company.”

In a joint statement¹² the U.S. embassy and diplomatic missions of the EU-member states in Tbilisi expressed “concern” over the appointment of a temporary management in Rustavi 2 TV. A separate statement was released by U.S. ambassador to Georgia, Ian Kelly, which said that “the Embassy is deeply concerned about developments late Thursday night related to Rustavi 2 management and ownership.” “Attempts to change the management of the station, in advance of the appeal process, have profound political implications,” according to the statement. A month earlier, on October 7¹³, U.S. State Department’s deputy spokesperson Mark Toner also spoke about the challenges facing media pluralism in Georgia and Rustavi 2 TV case. He also focused on the same issue on October 23¹⁴.

Appeal

On November 12, 2015, the Civil Cases Panel of Tbilisi City Court reinstated Rustavi 2 TV’s top management, including its director general Nika Gvaramia and financial director Kakha Damenia, until the enforcement of the November 5 ruling.

At the same time, Rustavi 2 TV lodged the second lawsuit with the Constitutional Court demanding to recognize as unconstitutional those norms, based on which Judge Urtmelidze delivered his ruling.

The Constitutional Court ordered to suspend application of those clauses in the civil procedure code based on which judge ordered appointment of temporary managers in Rustavi 2 TV.

On November 30 the Court of Appeals annulled the November 5 ruling delivered by Judge Urtmelidze through which temporary managers were appointed in the TV channel. In addition, the decision under which the company was restricted to rent the property needed for studio functioning was also annulled. Rustavi 2 TV appealed against the Tbilisi City Court’s decision related to its property in the Court of Appeals.

3.2. MAESTRO CASE

Ex-Prime Minister Bidzina Ivanishvili criticized not only Rustavi 2 TV, but also the influence of its information policy on other TV channels. He focused on this issue in the interview with Kviris Palitra in 2014:

¹¹ http://mdfgeorgia.ge/eng/view_statements/235/

¹² <http://www.civil.ge/eng/article.php?id=28754>

¹³ <http://www.tabula.ge/ge/story/100212-ashsh-xelisuflebis-qmedebebi-ashkarad-shemashfotebelia-da-seriozulad-vekidebit>

¹⁴ <http://www.tabula.ge/ge/story/100862-sax-dep-r2-is-daxurva-an-potenciuri-daxurva-mediasivrces-sheavitsrovebs>

Bidzina Ivanishvili: **“For me, the situation is more difficult on other TV channels, such as Channel One, Maestro or Imedi, because willy-nilly, deliberately or not, they repeat and disseminate the news raised by Rustavi 2... I named three TV channels and unfortunately, they do not seem to be independent, to conduct research, analysis and not to repeat what has been “pushed forward” by Rustavi 2.”¹⁵**

Giorgi Gachechiladze, co-founder of Maestro TV, also complained about the similarity between the editorial policies of Maestro TV and Rustavi 2 TV, when arguing about the ownership dispute with other co-owners and current management of the TV channel:

Giorgi Gachechiladze: **“I have an absolutely different imagination about Maestro’s TV programs; however, it is “an imitation” of Rustavi 2 TV and Imedi TV¹⁶,”** Gachechiladze said.

Amid the ongoing ownership dispute, newly appointed director general of Maestro TV, Levan Gachechiladze, Giorgi Gachechiladze’s brother and presidential candidate in the 2008 early elections, said that the main objective of Maestro TV is to attract viewers from Rustavi 2 TV:

Levan Gachechiladze: **“Our main slogan is to attract people from Rustavi 2. I want to outmatch Rustavi 2 TV by ratings,”** Levan Gachechiladze said¹⁷.

Media representatives have also made statements at different times on separate cases of interference in Maestro’s editorial policy.

On May 20, 2014 the Government of Georgia released a statement, involving a biased assessment of a weekly program aired by Maestro TV on May 18 and hosted by journalist Vakho Sanaia.

Statement of the GOG: **“In the course of the program, the journalist tried to portray a picture as if not a single promise of the authorities has been fulfilled. In an attempt to support this lie, he resorted to interviewing people in the streets and selected those responses, which would have reinforced the main line of the entire program”¹⁸.**

On September 28, 2014 Vakho Sanaia quit Maestro TV citing his conversation with the management as the reason behind his decision¹⁹. Sanaia claimed that Maestro TV’s director told him that his “programs

¹⁵ Kviris Palitra, September 15, 2014 . <http://bit.ly/1SPOCV6>

¹⁶ Interpressnews, September 22, 2015 <http://bit.ly/1ogOEYx>

¹⁷ Interpressnews, February 4, 2015 <http://www.interpressnews.ge/ge/sazogadoeba/364869-levan-gachechiladze-chemi-mthavari-lozungia-gadmvrthoth-adamianebi-grusthavi2q-dan.html>

¹⁸ <http://civil.ge/geo/article.php?id=28206>

¹⁹ Tabula, December 22, 2014 <http://www.tabula.ge/ge/story/91116-sanaia-gadabadzem-mitxra-rom-arxs-xelisuflebastan-problemebs-shevuqmnidi>

may lead to Maestro TV's confrontation with the authorities and create problems." Director of the TV channel, Baia Gadabadze cited controversy as the reason behind Sanaia's quitting the TV channel.

On December 22, 2014, Nino Zhizhilashvili, deputy director of Maestro TV and anchor of TV station's flagship news program at 9pm, as well as a group of journalists from the TV channel's newsroom quit Maestro TV. Zhizhilashvili cited her disagreement over editorial issues with the husband of co-owner of the channel, Koke Gogelia as the reason behind her quitting²⁰. In particular, the question was about Gogelia's vision, who wanted Maestro to be ideologically driven and "pro-Georgian," as well as about meddling of Koka Kandiashvili, who was communications consultant for the government, in the channel's editorial issues and the decision to scrap her program. Maestro's management rejected these allegations and announced reorganization. Labor rights of 14 employees dismissed from Maestro TV are protected by Transparency International Georgia.

In early 2016, Maestro TV suspended cooperation with Studio Monitor, whose investigative programs were aired by the channel for seven years.

History of Legal and Financial Dispute

The dispute on financial and ownership issues erupted between Maestro's co-founders and its management in 2015 and further developed in 2016.

On September 18, 2015 Director of Maestro TV, Eter Gabadadze applied to the Civil Cases Panel of Tbilisi City Court with a request to launch bankruptcy proceedings against Studio Maestro Ltd. The court accepted the suit on October 6.

According to the data posted on the website of the Georgian National Communications Commission, Maestro's advertising and sponsor revenues amounted to 5 123 105 in 2015. However, the management of Maestro TV claims that besides declared incomes, the channel has a credit indebtedness; in particular, an audit estimated Maestro TV's debt at GEL 54 million as of December, 2015 with Maka Asatiani being the largest creditor (GEL 49 million).

Giorgi Gachechiladze, owner of 25% of Maestro TV shares, held a press conference on September 22, during which he said that he did not agree with the decision on launching bankruptcy proceedings against Maestro TV. He accused the management of deliberate attempts to make the channel bankrupt and demanded its transfer to him, pledging to provide financial guarantees in case of consent. Giorgi Gachechiladze appealed against the decision on launching bankruptcy proceedings and the proceedings

²⁰ Tabula, December 22, 2014 <http://www.tabula.ge/ge/story/91111-zhizhilashvili-gogeliam-mitxra-rom-maestro-gaxdeba-ideologizebuli-proqartuli>

were suspended. But on December 8, 2015 the court renewed bankruptcy proceedings and the National Bureau of Enforcement, a legal entity of public law, was appointed as a trustee of Studio Maestro.

This process has aroused doubts from the very beginning about whether bankruptcy procedures were connected with a real reason or were actually associated with disagreement between the founders and represented legal means for changing the configuration of shares.

History of Changing Configuration of Shares

As of February 2, 2016, distribution of shares among Maestro TV's partners looked as follows: Giorgi Gachechiladze – 55%; Mamuka Glonti – 15%; Ekaterine Akobia – 5% and Maka Asatiani – 25%.

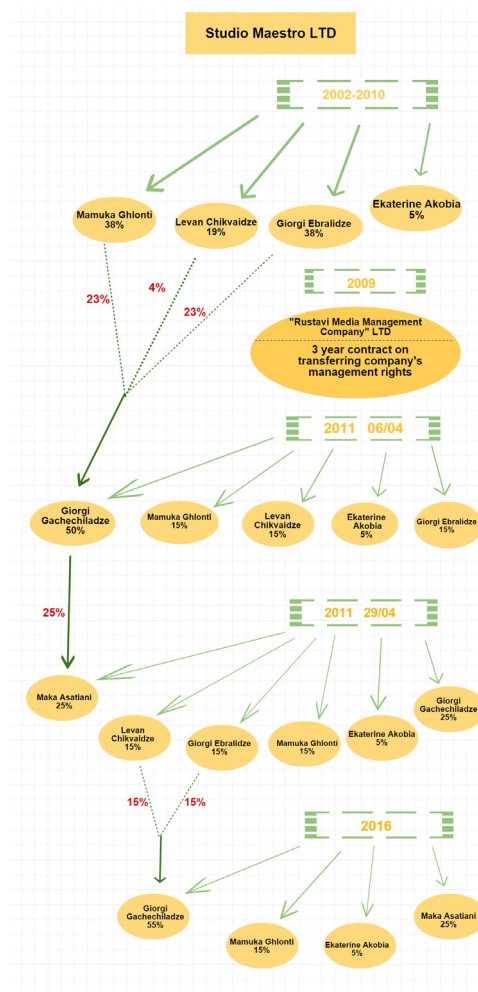
Configuration of shares has been modified after the change was registered at the public registry on February 2, 2016 and it was unveiled that Giorgi Gachechiladze became a majority shareholder (55%), who agreed with two co-owners – Giorgi Ebralidze and Levan Chikvaidze, to buy their shares, 15% from each. The remaining shares are still owned by Mamuka Glonti (45%), Maka Asatiani (25%) and Ekaterine Akobia (5%).

The partners meeting held on February 4, 2016 dismissed Baia Gadabadze, the director of the TV channel, from her position and appointed Levan Gachechiladze, brother of Giorgi Gachechiladze, as new director. However, the public registry did not register the change due to the process of appealing against the decision in court.

Maka Asatiani's representatives question the decision of the partners meeting and point at the purchase agreement signed between Giorgi Gachechiladze and other partners of Maestro TV on November 26, 2011. Under the agreement, Giorgi Gachechiladze had to transfer his shares to other shareholders no later than December 10, 2012, in the following proportions: 7.5% to Mamuka Glonti; 7.5% to Levan Chikvaidze; 7.5% to Giorgi Ebralidze; and 7.5% to Ekaterine Akobia. Upon the agreement of the parties, total cost of purchase was defined at GEL 400, according to the contract on selling the shares, which was signed by Giorgi Gachechiladze and other partners of Maestro TV on March 23, 2011. Based on the same agreement, Ilia Kikabidze, then director of Maestro TV, received Giorgi Gachechiladze's 25% of shares with management right.

Giorgi Gachechiladze appeared among Maestro's shareholders in 2011. On April 26, he became owner of 50% of shares (23% – from Mamuka Glonti; 4% – from Levan Chikvaidze; 23% – from Giorgi Ebralidze). Three days later, Maka Asatiani became the owner of 25% of shares owned by Giorgi Gachechiladze.

In 2009 Maestro TV signed a three-year contract with Rustavi Media Management Company on transfer of the TV channel with management right. Rustavi Media Management Company was founded and owned by Erosi Kitsmarishvili.



In October 2010 Erosi Kitsmarishvili, Levan Gachechiladze and Kote Gogelia, together with former Defense Minister Irakli Okruashvili, established a new Georgian Party with an aim to normalize relations with Russia. Later, Kote Gogelia, Russian-based businessman and Maka Asatiani's husband, quit the party citing disagreement as the reason behind his decision²¹.

Imedi TV's Interests

Under the circumstances when Maestro's bankruptcy case was being discussed by court, additional questions were raised after a rival TV channel expressed a desire to invest millions in Maestro TV.

A 55% owner of Maestro TV, Giorgi Gachechiladze publicly stated that in order to solve Maestro's financial problems he contacted the Patarkatsishvili family and his friend, Irakli Rukhadze pledged to assist him²². Irakli Rukhadze is the chief executive of Salford Georgia and remains affiliated with the Patarkatsishvili family. He is even believed to be an informal manager of Imedi TV. TV anchor, Inga Grigolia hints at Rukhadze's decision when talking about the closure of her program on Imedi TV²³.

²¹ Netgazeti, November 3, 2011 <http://netgazeti.ge/news/11300/>

²² Liberali, February 2, 2016 <http://liberali.ge/news/view/20570/gachechiladze-maestro-rom-gadamerchina-patarkatsishvilebis-ojakhtan-mokhda-chemi-urtiertoba>

²³ <http://www.timer.ge/grigoliam-aseve-misi-da-irakli-rukhadzis-urthierthobaze-isaubra/>

On February 8, 2016 Baia Gadabadze, director of Maestro TV, publicized correspondence, according to which Irakli Rukhadze wanted to buy Maestro in the past and even tried to conclude a deal with Kote Gogelia and Maka Asatiani. Gadabadze said that Rukhadze wanted to obtain Maestro's content, as well as its licenses and frequencies at USD 7.5 million²⁴.

Irakli Rukhadze confirmed that negotiations were underway on commercial issues, but noted disagreement between the parties on the price.

"Kote Gogelia was demanding USD 9.5 million; we were offering USD 7.5 million. Today, Kote is demanding 5.5 million for 30%, if I am not wrong, for Bacho Kikabidze's shares. I talked with Kote 7-8 times during two weeks and if "Ucnobi" [Giorgi Gachechiladze's nickname] had agreed on this sum then, nobody would have learnt about this case at all," Irakli Rukhadze said²⁵.

It was made public in January, 2016 that Imedi TV bought Maestro's and GDS's commercial airtime. Meanwhile, from 2016 the three TV channels started using the service of a new company, Tri-Media Intelligence LLC, measuring ratings of Georgian television channels; thus, previous contract with the company TVMR was not prolonged.

On February 8, U.S. Department of State spokesperson, John Kirby made a statement on the developments around Maestro TV and stressed that freedom of media is vital for democracy in Georgia.

²⁴ Tabula, February 8, 2016 <http://www.tabula.ge/ge/story/104418-gadabadze-irakli-ruxadze-maestros-xelshi-chagdebas-adrec-cdilobda>
²⁵ Interpressnews, February 9, 2016 <http://www.interpressnews.ge/ge/politika/365436-irakli-rukhadze-ganckhadebas-gavaketheb-sadac-shevecdebi-yvelaferi-ganvmarto.html?ar=A>

4 INTERFERENCE IN EDITORIAL INDEPENDENCE/CLOSURE OF THE PROGRAMS

Three political talk shows were closed in 2015. Two of them were among the best rated programs of Imedi TV. A comment by a representative of the governing party on the editorial decision of the TV company leaves the impression that the government is interested in this process. The third talk show was of the Public Broadcaster and its closure was connected to the program anchor's marriage to an opposition party leader and who was fired from the Public Broadcaster in 2016. The journalists and the head of news service program were fired at the Adjara regional TV channel – TV 25 at the end of 2015.

4.1. CLOSURE OF TALK SHOWS IN IMEDI TV

On 29 August 2015 Imedi TV issued the statement on suspension of political talk show and presenting them to the viewers in the new format in 2016.

Producers and journalists of these two programs – Reaktsia and Imedi's Kvira – issued joint statement in the social network, saying that suspending commercially beneficial programs in the beginning of the TV season, 1 year before the election raised suspicions. The editors and an anchor Inga Grigolia stated that Imedi's decision was a result of political influence. Their suspicions are confirmed by the fact that the journalists learned about the decision of the programs' closure from TV, despite the fact that the programs had their new preview for the new fall season already recorded.

Imedi TV made its own statement in response, claiming that the journalists' comments were baseless.

Inga Grigolia spoke about the government's interference in the editorial issues even before the closure of her program. In March 2015 she publicly stated that the parliamentary faction of the Georgian Dream demanded from Imedi editors not to cover in *Reaktsia* the protest rally planned by the opposition National Movement for 21 March.

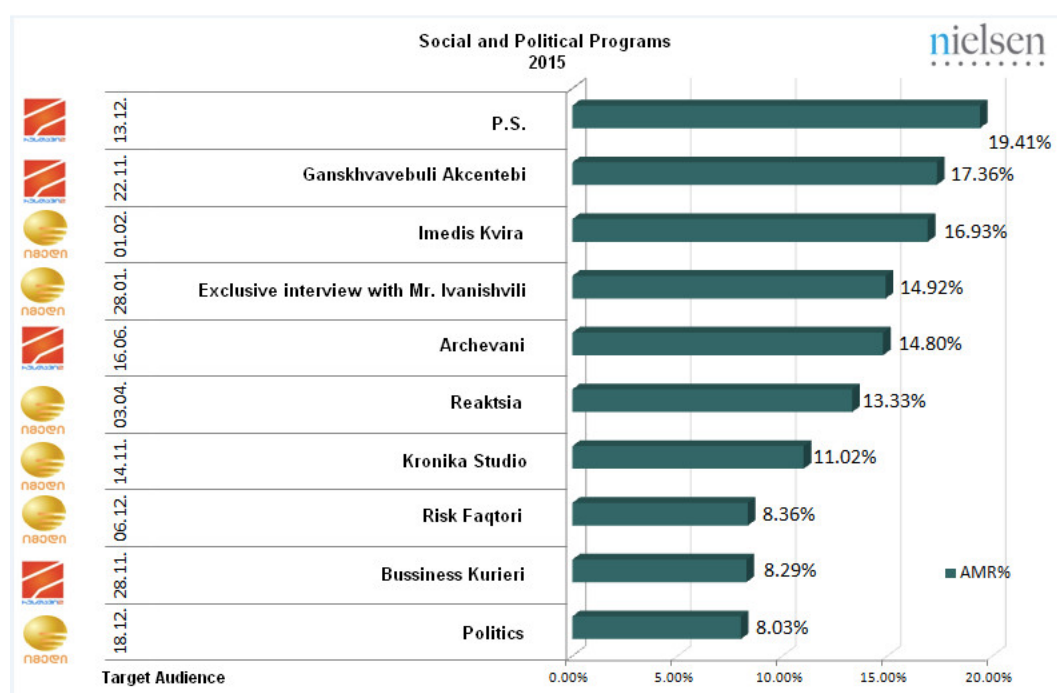
While speaking about the closure of Imedi programs with Rustavi 2 journalists, representative of the Georgian Dream parliamentary majority Gogi Topadze said¹, that the anchors had been warned a number of times and that nobody could be forgiven for partiality.

Gogi Topadze, Georgian Dream: **“The channel began to only criticize and insult the government and of course they had to take some measures. They have been warned a number of times, that they should be objective, I also told them this a number of times. Nobody will be forgiven to be nonobjective.”**

Inga Grigolia also claimed² that Irakli Rukhadze who is involved in Maestro TV Channel ownership dispute and runs businesses of the family of Patarkatsihvili (owner of Imedi TV) was connected to her dismissal.

Ten opposition parties outside the Parliament made a statement on the programs’ closure, stating that closure of commercially profitable programs with high ratings could not be logically explained. They called on the international community to “pay attention to the increasing manifestations of authoritarianism in Georgia” .

According to the TV ratings measurement company TVMR data for Georgia, the talk show Reaktsia was among the 10 best TV programs of the year in the ratings for 2015.



Closure of political talk shows during the pre-election period has been assessed as problematic by the NGOs – Transparency International Georgia, ISFED and MDF.

¹ Kurieri, Rustavi 2 TV, 31 August 2015. <http://rustavi2.com/ka/news/25055>

² Timer, 9 February, 2015. <http://www.timer.ge/grigoliam-aseve-misi-da-irakli-rukhadzis-urthierthobaze-isaubra/>

4.2. CLOSURE OF THE PUBLIC BROADCASTER TALK SHOW

On 4 September, during the discussion about challenges for the TV media, organized by the Media Advocacy Coalition, Basa Janikashvili, advisor to the Director General of Public Broadcaster, announced that the anchor of the First Studio program Eka Mishveladze had a conflict of interest because of her marriage to politician Aleksi Petriashvili. The journalist herself learned about the closure of her program during this public meeting.

Eka Mishveladze's contract with Public Broadcaster did not include prohibition of the conflict of interest. According to Article 22.2 of the Code of Conduct of Public Broadcaster, employee is obliged to declare conflict of interest. Specifically, "If an employee, acting reasonably and in good faith, concludes at any time that there is a conflict of interest or that there are reasonable grounds for a perception of conflict of interest, then the employee has a duty to disclose the matter to his or her immediate supervisor. The Broadcaster and the employee should resort to any appropriate measure to remove the conflict. Based on the circumstances, the employee might have to refuse reporting certain issues or perform other service³." This Article does not envision closure of the program in the case of possible conflict of interest. Instead, it provides for overcoming conflict of interest in agreement with management, by refraining from covering certain issues or by working on other tasks.

After harsh critique from the civil sector came the news that the journalist received an offer from the channel's management and would anchor a new analytical program from January 2016⁴. After waiting for six months Eka Mishveladze received an official letter from the management informing her about the termination of her contract. Eka Mishveladze is going to appeal the decision in the court.

4.3. THE FIRING OF TV 25 JOURNALISTS

On 31 December 2015 all employees of TV 25 news service were fired by the management. Later it partly reversed its decision and fired only journalists Nino Kheladze, Jaba Ananidze, Irma Zoidze and the head of the news service Maia Merkviladze.

This decision was preceded by a briefing of the head of news service on 29 December 2015, who accused the TV channel's management and owners of interference in editorial independence. Such statement was made by journalist Jaba Ananidze, who said that an owner requested that the journalist make his tone softer while reporting on Giorgi Chkonia – a businessman close to the government.

³ Public Broadcaster Code of Conduct, Article 22.2, p. 51.

http://eurocommunicator.ge/mdf/uploads/GPBs_in-house_Code_of_Conduct_ENG_-_Copy.pdf

⁴ IPN, 5 November, 2015. <http://www.interpressnews.ge/ge/politika/352911-eka-mishveladze-sazogadoebriv-mautsyebelze-sazogadoebriv-politikuri-thoq-shous-moamzadebs.html?ar=A>

The conflict in TV 25 came after the story about arrest of an employee of the Adjara Trade and Industry Chamber, aired on 14 December. The arrested person is family member of the channel's chief director, for which reason the chief director insulted and threatened the head of the news service Maia Merkviladze. 15 days after the incident, the management fired all employees of the news service.

The management of TV 25 made an announcement about hiring new employees. Meanwhile, the fired employees turned to Batumi City Court, claiming interference in editorial policy and violation of labor rights.

5.1. AVAILABILITY OF PUBLIC INFORMATION AND EXISTING PROBLEMS

Introduction

In order to ensure comprehensive monitoring of media-related matters, it is often important and decisive to receive and handle the information held by government agencies. Georgian legislation envisages quite an efficient mechanism for interested persons in this respect that is met in the norms regulating the availability of public information (General Administrative Code of Georgia; a chapter related to freedom of information). However, in order to enforce the law efficiently, it is important to have the will of administrative bodies and generally government agencies to ensure the availability of public information held by them under the established rules and timeframes.

It is important for any citizen or organization interested in obtaining particular public information to receive this information within certain timeframes because information handling serves a specific purpose. The delayed information may lose its value just stemming from this purpose.

Statistical Data

In 2014–2015, Media Development Foundation (MDF) requested information from 150 public institutions, including the ministries and their structural units, legal entities of public law and legal entities of private law established by the state. A part of information was about media spending and the other part – about important issues related to professional activities of the media. It should be noted that in most cases public institutions provide public information, but some difficulties are still observed.

MDF's request for public information was rejected in 17 cases. For each case of refusal, MDF filed administrative complaints to a superior body. Seven administrative complaints were satisfied and information was provided based on the orders from superiors or superior bodies.¹⁰ administrative

complaints were rejected and the cases moved to the court. The parties reached an agreement on four court disputes; one lawsuit was satisfied fully and one was rejected; five court disputes are still underway.

Non-Notification of Refusal to Provide Information

Not only some public institutions do not provide public information, but they do not even notify applicants about refusal. It is problematic in itself, because in this case applicants will learn about their failure to receive the information indicated in an application only after expiration of a term necessary for providing information and they will not be able to understand the reasons for such refusal.

MDF requested information from the Georgian Chamber of Commerce and Industry on January 13, 2015; from the Interior Ministry – on October 22, 2015; from the Georgian Railway – on June 24. In none of these cases the applicant was notified about refusal to provide information; neither was the requested information provided within defined timeframes.

Providing Information at Litigation Stage

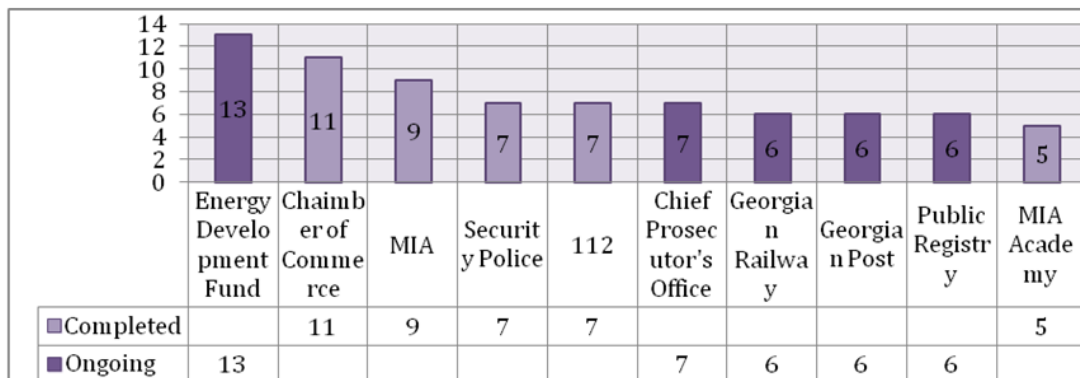
On December 25, 2014 the Media Development Foundation requested information from the Interior Ministry's legal entities of public law – Security Service, 112 and Academy of the MIA about advertising, marketing and media expenses covered by them. However, MDF managed to receive this information only after filing a lawsuit in court. In this case, the parties managed to reach an agreement; however, it took several months to obtain information. The above mentioned agencies decided to provide information in the process of litigation that is an alarming fact, as it indicates that they realize public nature of information and the obligation to provide it, though they fulfill this obligation inappropriately and make efforts only after the case moves to court. As a result, a party interested in information loses time and resources; moreover, it causes inefficient spending of administrative resources.

Delay in Providing Public Information

It is important to note that legislation sets a 10-day period for preparing and releasing public information. But it is a maximum period within which a public agency should ensure providing relevant information; it means that an agency accountable to the public is obliged to provide requested information as soon as possible even if it has been disclosed proactively. Such approach in legislation is based on a presumption that information must be provided unless there is a certain objective hampering circumstance.

Even if an interested party wins court dispute, according to MDF's practice, the period from requesting information to receiving this information reaches half a year, on average.

Table 1.1. The terms of adjudication of lawsuits related to requesting public information according to MDF's practice for 2014–2015



The terms of delivering a court ruling are also quite problematic. The court rejected MDF's lawsuit against the prosecutor's office and announced its ruling at a hearing on November 18, 2015. However, the ruling was delivered to MDF almost after two months (on January 14) in violation of the terms that further delays the term of receiving information.

Chief Prosecutor's Office of Georgia

The Chief Prosecutor's Office is a problematic and closed agency in terms of information availability. Naturally, stemming from the essence of activities carried out by the prosecutor's office, any information cannot be as open as in case of other public agencies. However, the prosecutor's office turns legislative exceptions into norm and introduces harmful practices in terms of releasing information. In case of requesting information about any media-related incident containing the signs of criminal offence, the Chief Prosecutor's Office refers to subparagraph "a" of part 4 of article 3 of the General Administrative Code of Georgia, according to which "this Code shall not apply to the activities of the bodies of the executive authority related to: a) criminal prosecution and criminal proceedings against a person having committed a crime." Through this approach the Chief Prosecutor's Office of Georgia disclaims the obligation to provide public information and does not even confirm opening of investigation into high-profile cases; in case of delayed investigations, it leaves the public without information about the course of investigation and its results. Judicial misinterpretation deprives the civil society of an opportunity to control how investigative and prosecution bodies fulfill their obligations. Moreover, an interested party fails to receive information about those cases, where opening of investigation has been confirmed but no tangible results have been achieved. It paves the way for dragging out the investigation on important cases related to human rights.

Personal Data Protection and Public Information

As it seems, the Law on Personal Data Protection represents a problem for Georgian administrative bodies in terms of providing public information. Administrative bodies fail to give reasons explaining

their refusal for each individual case and use an undifferentiated approach when refusing to provide information containing personal data.

The Media Development Foundation requested the founding documents of a political party Alliance of Patriots of Georgia from the National Agency of Public Registry, as it wanted to examine whether the prohibition envisaged by the Law of Georgia on Broadcasting was violated. According to the law, the broadcasting license holder cannot be a political party or its officials. However, MDF received the founding documents from the National Agency, where the names and surnames of party officials (secretary general and members of the revision commission), except of the party chairperson, were hidden citing personal data protection. Since proceeding from the tasks of the political party, they represent public persons, it is unclear what the purpose of hiding the names of party officials is. Currently, this dispute is also adjudicated by court, but the trial is dragged out because of the involvement of the Alliance of Patriots of Georgia as a third party that is an obscure procedural action, because a claimant has a dispute about the issue that an administrative authority is obliged to provide disputable information even without having a consent from a personal data subject.

Hiding personal data is also problematic when requesting court decisions, because a particular case may trigger public interest just stemming from the subject of this case. Frequently, hiding personal data makes it impossible to search the entire decision. MDF has prepared a constitutional lawsuit in connection with this problem.

Constitutional Lawsuit

According to the constitutional lawsuit prepared by the Media Development Foundation, it is essential to announce as unconstitutional the normative content of paragraph 1 of article 44 of the General Administrative Code of Georgia (A public institution shall be obliged not to disclose personal data without consent of the persons themselves, or without a justified court decision if so provided for by law, except for personal data of officials (and of the nominees for positions), which allows for such explanation of the norm according to which common courts can hide the names and identity information of all persons participating in each decision/judgment/verdict. When appealing against this normative content, the foundation guides itself by paragraph 1 of article 41 of the Constitution of Georgia, which secures freedom of receiving information.

MDF believes that the right to having public access to documents should be as wide as possible. Providing information should be limited only when disclosure of such information will harm concrete public or private interests. Restrictions on access to information citing personal data protection should be imposed with respect to individual cases and not generally.

Receiving Public Information from Legal Entities of Private Law

Receiving information from non-entrepreneurial (non-commercial) or entrepreneurial legal entities established by the state is yet another problematic issue. In most cases, legal entities of private law disclaim their obligation to provide public information citing that they do not represent the subjects of public law. The ongoing dispute with the Georgian Post and the Georgian Railway highlights just this problem.

It should be noted that on June 11, 2015 a lawsuit filed by MDF against Agricultural Projects Management Agency was satisfied. The judge made a precedent decision and further strengthened the standard, according to which legal entities of private law are obliged to provide public information if they adhere to the principles of public law. But even in this case, it took MDF seven months along with mobilization of relevant resources to receive the requested information.

Recommendations

- In order to efficiently implement the chapter on freedom of information of the General Administrative Code, public institutions should carry out effective measures and introduce clear internal procedures for this purpose.
- The Chief Prosecutor's Office of Georgia should hold consultations with the participation of civil society and lawyers in order to rule out legal misinterpretation and eradicate the practice introduced by this institution in connection with high-profile cases.
- Courts should ensure duly adjudication of the cases related to providing public information so that trials are not dragged out for an indefinite period and public information does not lose its value.

5.2. FREEDOM OF EXPRESSION CASES

In 2015, two complaints were filed with courts against the infringement on honor and dignity by journalists' reports exposing the involvement of public servants in corruption. The first case concerned the Parliament Vice-Speaker Manana Kobakhidze whilst another concerned the journalistic investigation into the activity of Georgia's Co-Investment Fund associated with the former Prime Minister Bidzina Ivanishvili. Yet another court dispute concerned the retraction of information about a family member of the opposition party published in online media.

5.2.1. Parliament Vice-Speaker Manana Kobakhidze v. Editor of Kronika+ Newspaper Eliso Kiladze

On 22 December 2015, Davit Lanchava, the defense lawyer of Vice-Speaker of Parliament Manana Kobakhidze, filed a complaint on her behalf with the Tbilisi City Court against the editor of Kronika+ newspaper, Eliso Kiladze.

According to media reports, the complainant alleges that the material published by Kronika+ infringed on the honor and dignity of Manana Kobakhidze, was untruth and libelous and aimed at discrediting her in the eyes of society.

Manana Kobakhidze accuses Eliso Kiladze of defamation and demands that the court order Eliso Kiladze the publication of a court decision.

Apart from the editor of the newspaper, the Parliament Vice-Speaker also filed a complaint against a member of the city council, Aleko Elisashvili, in particular, against the latter's allegation in regard with the so-called pardon case that Manana Kobakhidze and the chairman of parliament's human rights committee Ekaterine Beselia had the financial interest in pardoning convicts in a high-profile drug-dealer case.

5.2.2. JSC Georgia's Greenhouse Corporation v. Rustavi 2 Broadcasting Company and Journalist Eka Kvesitadze

On 6 May 2015, the JSC Georgia's Greenhouse Corporation filed a complaint with the Tbilisi City Court against Rustavi 2 TV company and its journalist Eka Kvesitadze. The complainant demanded the publication of information refuting the report harming the reputation of the complainant.

On 21 March 2015, the Ganskhvavebuli Akcentebi program aired on Rustavi 2 reported that within the framework of Produce in Georgia state program, the government of Georgia, by its decree #1477 of 26 August 2014, handed over the state-owned 350,000 square meter non-agricultural land, which was estimated at 2,450,000 GEL by the state, to the JSC Georgia's Greenhouse Corporation for a symbolic price of 1 GEL. According to the complainant the land was handed over to the JSC Georgia's Greenhouse Corporation through a direct sale on the condition that it will make 9,800,000 GEL worth investment in it. Consequently, the complainant believes that the Rustavi 2 reported essentially false facts and deliberately released incomplete information.

The complainant claims that the author of the program misled the audience by reporting that the owner of the JSC Georgia's Greenhouse Corporation is GCF Partners, the management company of the Georgian Co-Investment Fund, which is co-owned by Ucha Mamatsashvili, a cousin of Bidzina Ivanishvili, and Giorgi Bichiashvili, the Chief Executive Officer of the Fund.

On 24 March 2015, the news program of Kurieri on the Rustavi 2 TV channel reported that the land plot worth 2,500,000 GEL, located in Gardabani, was handed over to a company of Bidzina Ivanishvili's cousin for 1 GEL. The final shots of the report featured an old, Soviet-era greenhouse which did not belong to the JSC Georgia's Greenhouse Corporation. According to the complainant, the report created an impression that the Greenhouse Corporation did not make any investment.

The complainant demands that the defendants be ordered to refute the statements harming the complainant's reputation in a commensurate manner – through the same means and in the same program – Ganskhvavebuli Akcenetbi and Kurieri. In particular, the complainant demands that the defendant make the statements that (1) the information that “the owner of the JSC Georgia's Greenhouse Corporation is GCF Partners, the management company of the Georgian Co-Investment Fund, which is co-owned by Ucha Mamatsashvili, a cousin of Bidzina Ivanishvili, and Giorgi Bichiashvili, the Chief Executive Officer of the Fund” is incorrect. In reality, the shareholder of the JSC Georgia's Greenhouse Corporation is Georgian Agro Development LLC; (2) the information that the JSC Georgia's Greenhouse Corporation purchased the property for 1 GEL alone is wrong and that the property was handed over to the complainant under the investment obligation of 9,800,000 GEL.

The complainant notes that according to Article 13 of the Law of Georgia on Freedom of Speech and Expression, a person shall be imposed civil liability for defamation against a private person if the claimant proves in court that the statement of the respondent contains essentially false facts directly related to the claimant, and this statement caused damage to the latter. The complainant believes that the reports of the defendant do not constitute personal opinions of the journalist about the complainant but the assertion of facts. In the complainant's view, the failure to double check facts indicate about the deliberate distortion of facts.

5.2.3. Davit Vashadze v. Exclusivenews

Claim: On 18 August 2014, the news agency Exclusivenews published an article titled “Giorgi Vashadze's Brother ‘Got Married’?!” by journalist Darejan Liparteliani.¹ According to the complainant, with this article, alleging that the complainant has intimate relationship and lives with the head of Prometheus cinema, Gaga Chkhaidze, the journalist defamed the complainant.

According to the complainant, the journalist showed interest towards him for the only reason that he is the brother of Giorgi Vashadze, one of the leaders of the political association United National Movement and the publication aimed at discrediting both Giorgi Vashadze and him rather than satisfying the public interest.

The complainant noted that the author of the article neither contacted him nor made any attempt to double check the information received from an “informant” regardless of the fact that, as the article reveals, the journalist had the complainant's phone number. Consequently, the complainant learned about the article only after its publication and was not given a possibility to provide adequate response to the incorrect information released about him.

The initial complaint indicated both the media owner Exclusivenews LLC and the journalist as Darejan Liparteliani defendants, however, at a session held on 24 March, the complainant specified the claim indicating the Exclusivenews LLC as the only defendant.

¹ <http://www.exclusivenews.ge/?page=view&artid=6363>

The complainant demanded (1) the retraction of false facts released by Exclusivenews LLC and the publication of the court decision by the news agency, (2) the compensation for moral damage in the amount of 10,000 GEL by Darejan Lipeateliiani and Exclusivenews LLC solidarily.

The defendants Darejan Lipeateliiani and Exclusivenews LLC did not appear at a main court session held at 10:00 on 24 March 2015. They did not notify the court about the reason of their absence. The representative of the complainant filed a motion for ruling in absentia.

Ruling: On 24 March 2015, because of the failure of defendants to appear before the court, the Tbilisi City Court made a ruling in absentia and fully satisfied the claim of the complainant.

According to the court ruling, the Exclusivenews LLC was (1) ordered to refute the information published in the article of Darejan Liparteliiani titled “Giorgi Vashadze’s Brother ‘Got Married’?!” in the Exclusivenews in the following form: to publish that the information according to which “Vashadze and Chkheidze were in intimate relationship. Now they decided to come out. Therefore Gaga Chkehidze ‘legalized’ his relationship with Vashadze and they live together today. In short, Giorgi Vashadze’s brother ‘got married’,” is false.

The court imposed the compensation of 10,000 GEL for moral damage to Davit Vashadze on Darejan Liparteliiani and the Exclusivenews LLC.

Motivation: The decision notes that according to Paragraph 1 of Article 230 of the Civil Procedures Code of Georgia, if the defendant fails to appear at the hearing and the plaintiff files a motion for a judgement in absentia, then the factual circumstances referred to in the claim shall be deemed proven. In accordance to Paragraph 2 of Article 230 of the Civil Procedures Code, if the circumstances referred to in the claim provide a legal justification for the claim, the claim shall be satisfied.

The city court ruled that the circumstances referred to in the claim and deemed as proven legally justifies the claim in accordance to Article 17 of the Law of Georgia on the Freedom of Speech and Expression and Article 18 of the Civil Procedures.

Appeal: The news agency appealed the decision taken in absentia.

Comment: The journalist challenges that part of the decision of the court of first instance, which imposes on her the compensation, because according to Article 6(2) of the Law on Freedom of Speech and Expression, “In case of a court dispute related to the defamation published by a journalist in the media, the defendant shall be the owner of the media.” The complainant specified his initial claim and indicated the Exclusivenes LLC as the only defendant, but the court wrongly imposed the payment of compensation on the journalist.

6 IMPORTANT MEDIA CASES IN 2015

6.1. COVERT SURVEILLANCE AND BLACKMAILING

In 2015 statements were made on two cases of covert surveillance and three blackmailing of representatives of media. Two of them were related to Rustavi 2 when the TV company was actively engaged in the court dispute on the ownership issue, while the third case was related to the anchor of a Public Broadcaster's political talk show, who married one of the leaders of the opposition party Free Democrats.

Probable recruiting attempt of a Rustavi 2 employee by the State Security Service

On 8 December 2015, Rustavi 2 reported¹ about the attempt of the State Security Service (SSS) to recruit Kakha Kublashvili, the driver of TV company's financial director.

According to the TV company, SSS officers stopped Kakha Kublashvili and invited him into their Toyota Camry. The officers in plain clothes introduced themselves as SSS servicemen. The conversation continued for two hours and, according to Kublashvili, was aimed at recruiting him in exchange for financial benefits. It also appeared that the financial director was under surveillance too.

According to the Ministry of Internal Affairs, after the interview with Kakha Kublashvili the investigation was not initiated because of lack of elements of crime.

Statement by Nika Gvaramia regarding the government's attempt to blackmail him by publishing secret recordings

On 21 October 2015 Director General of Rustavi 2 Nika Gvaramia made a special statement² about threats and a blackmail attempt from the government. According to Nika Gvaramia, the government sent an intermediary, the chairman of the organizational committee of the European youth Olympic festival in

¹ <http://www.tabula.ge/ge/story/102650-sus-i-rustavi-2-is-tanamshromlis-gadabirebas-cdilobda>

² <http://rustavi2.com/ka/news/29585>

Georgia Aleksí Akhvlediani, to convey the following message: Gvaramia should better move away from the developments concerning the contested ownership of Rustavi 2 or risk secret recordings of his private life as well as phone conversations with Mikheil Saakashvili, possessed by the government, being made public; he was also advised not to forget that he has family members.

The Prosecutor's Office launched the investigation into this statement on the same day. On 29 October 2015, a week after the statement by the Director General of Rustavi 2, a Ukrainian website published recordings of conversations between Nika Gvaramia and Mikheil Saakashvili, as well as between Giga Bokeria and Mikheil Saakashvili. On the basis of these recordings the State Security Service of Georgia launched investigation into the conspiracy to overthrow government. The Prosecutor's Office never clarified the legality of these recordings.

The statement by the anchor of Public Broadcaster's political talk show about covert surveillance

On 8 September 2015, the anchor of the Public Broadcaster's political talk show First Studio, Eka Mishveladze, said during Rustavi 2 TV program Archevani³, that she and her spouse – one of the leaders of the opposition party Free Democrats Aleksí Petriashvili – were under surveillance.

“The special services knew about my marriage with Aleksí Petriashvili well before the Public Broadcaster [Director General's] advisor learned about it”, – said Eka Mishveladze on Rustavi 2 talk show Archevani.

On 9 September the “This concerns you – they still listen to us” campaign called on the law enforcement agencies⁴ to launch investigation into Eka Mishveladze's statement.

6.2. THREATS

Three cases of intimidation were connected with the journalistic activities. In one case the threat came from a representative of organized crime in connection with the investigative material aired by Rustavi 2; in another case it was related to a cartoon published by Azeri-language website renessans.ge, which was taken as an insult to religious sentiments; in the third case it was related to critical question by a Maestro journalist to the Prime Minister.

The threat against journalist Eka Kvestadze

On 24 February 2015, Rustavi 2 journalist Eka Kvestadze declared that she received a call from the so called thief in law Mindia Goradze, nicknamed Lavas-Oghli, threatening her because of her re-

³ <http://netgazeti.ge/news/43875/>

⁴ <http://www.transparency.ge/post/general-announcement/es-shen-gekheba-isev-eka-mishveladzis-gantskhadebaze-reagirebas-itkhovs>

port. Eka Kvesitadze published the telephone number (+372 816 520 97), from which Mindia Goradze called her.

The special issue of Different Accents TV program⁵ was dedicated to the backing of the thieves in law by the Georgian government. Mindia Goradze was mentioned in this context in the program.

According to the information from 25 February, criminal investigation was launched on the basis of Article 151 (threats), and was conducted by the Criminal Leaders Section of the Organized Crime Main Division of the MIA. According to Kvesitadze, this investigation did not bring any specific results.

Threats to the Azeri-language website *Renessans* journalists

On 23 June Kvemo Kartli Information Center published the information⁶ that Azeri-language website *renessans.ge* received death threats after the publication of cartoon.

According to the information, the threats came from the chairman of Marneuli Imam Ali Charity Foundation Javid Gurbanov, who sent the following message to journalists Aida Tagieva, Aidan Yusibova and editor Nugzar Japarov: „If you do not delete this cartoon, if you continue these insults, I swear by Allah that your blood will be spilled. I swear by God in whom you do not believe that I will take off your heads with my own hands. I am sure, your blood is more precious than the ink of your pen“.

According to *renessans.ge* journalist Aida Tagieva, they published the cartoon depicting a cage broken by journalists who went out of it with books in their hands. According to her, the cartoon was taken by some people as depicting the mosque, which became the reason of the threat.

Renessans.ge journalists provided the media and law enforcement agencies with the letters they had received confirming the threats. The journalists addressed the police in June 2015. Isani-Samgori police division started to study the case. However, according to Aida Tagieva, this has not brought any result yet.

The threat to Maestro journalist Irakli Vachiberadze

According to Maestro TV reporter Irakli Vachiberadze, he was bullied by the head of Guria Regional Main Division of MIA Koba Tsertsvadze because of his question to Prime Minister Irakli Garibashvili.

The journalist asked the question about the arrest of the National Movement members, David Mzhavanadze and Ilia Malazonia, and a member of organization Free Zone, Beso Katamadze, during Garib-

⁵ <http://rustavi2.com/ka/video/74?v=2>

⁶ <http://ick.ge/articles/22461-i.html>

ashvili's visit to Ozurgeti on 15 September 2015. These individuals hang a poster saying "Liar Government" on one of the town's apartment blocks. As soon as they did this, they were arrested. They were charged on the basis of Article 150, Part 2 of the Administrative Offences Code, which concerns making various types of inscriptions, drawings or symbols on building facades, shop windows, fences, columns, trees without authorization, also putting up placards, slogans, banners at places not allocated for this purpose.

The Ministry of Internal Affairs made a statement regarding this incident, expressing the readiness of the ministry's general inspection to start investigation into the journalist's statement and in the case a legal violation is established, to react to it appropriately.

6.3. INTERFERENCE IN PROFESSIONAL ACTIVITIES OF JOURNALISTS

Out of three cases of interference in professional activities of journalists, only one, in which the opposition party members and their supporters were involved, was reacted to. In two other cases, in which government representatives were involved, results of investigation are unknown to the public.

IPN photo correspondent was physically and verbally attacked

On 4 March 2015, during the rally on the Rose Revolution Square, organized by three political parties – Reformers, Free Georgia and Christian-Democratic Movement – a photo correspondent of Interpress-news (IPN) agency, Irakli Gedenidze, was physically and verbally attacked. Irakli Gedenidze was injured and hospitalized as a result of the beating. His camera was also damaged.

According to Irakli Gedenidze, a person who came out of a car demanded from him to delete the materials he had taken. Gedenidze refused and explained that he was a journalist and was performing his professional activities. After that Gedenidze was physically assaulted.

Several hours after the incident police arrested Ivane Begiashvili for interference in professional activity of journalist and damage or destruction of an item (Part 2, Article 154 and Part 1, Article 188, Criminal Code of Georgia).

As a result of this incident, Free Georgia party expelled Giorgi Begiashvili, who, according to the chairman of the party Kakha Kukava, did not stop his son Ivane Begiashvili in time and only took part in the verbal confrontation⁷.

⁷ <http://netgazeti.ge/news/39120/>

Interference in professional activities of Adjara Public Broadcaster journalist

According to Adjara Public Broadcaster⁸, on 1 September 2015 there was an incident between the news crew and employees of Adjara Ministry of Agriculture.

According to the editors, reporter Lasha Veliadze was verbally insulted in the yard of Keda Municipality winery while he was arranging an interview with the chief specialist of Information-Consultation Department of Adjara Ministry of Agriculture Karlo Kekelidze. They were approached by an employee of Adjara Ministry of Agriculture Mirza Suknishvili who insulted the journalist. During the incident the journalist was also physically attacked. Deputy Ministers of Agriculture of Adjara Rostom Shervashidze and Avtandil Meskhidze were present during the incident.

Mirza Suknishvili claimed that journalist was drunk. This was denied by the Broadcaster's news service head Shorena Ghlonti who said that after the incident the journalist and cameraman were checked for alcohol in the Expertise Bureau and none of them tested positive. The TV channel requested investigation of the incident. The Chairman of the Government of Adjara ordered to suspend powers of Deputy Minister of Agriculture Avtandil Meskhidze until the report of the disciplinary commission had been drawn up.

According to the MIA, the investigation into Lasha Veliadze case was terminated as no elements of crime were found.

According to Transparency International Georgia, „This is not the first case when representatives of the Ministry of Agriculture of Adjara behave with the journalists inappropriately and in contradiction with the law. In December 2013 TV 25 journalist Sulkhan Meskhidze accused Deputy Minister Avtandil Meskhidze of making threats against him. TV reports on this issue did not result in any response either from the ministry or from any law enforcement agency.”

Interference in professional activity of Rustavi 2 reporter by a state employee of Lanchkhuti Municipality

On 21 October 2015 Rustavi 2 TV issued the footage⁹, depicting the employee of technical service agency of Lanchkhuti Municipality Nugzar Tsintsadze preventing the regional reporter of Rustavi 2 Lado Menabde from filming in the public space and insulting him. Tsintsadze called the journalist “people’s enemy” and “sectarian”, with further verbal abuse. Tsintsadze, who was at the rally against the opposition National Movement, told Rustavi 2 journalist that he was prohibited from working in Lanchkhuti and that Rustavi 2 was biased.

⁸ Adjara Public Broadcaster, 2 September 2015, <http://ajaratv.ge/acharis-televiziam-prokuraturas-mimarta>

⁹ <http://www.myvideo.ge/v/2667507>

This is not the first case of Lado Menabde being hindered while conducting his professional activities. In the past he had already turned to police and prosecutors a number of times.

One year ago Nugzar Tsintsadze verbally abused Lado Menabde and Rustavi 2 cameraman. According to the TV channel's footage,¹⁰ on 8 December 2014 Tsintsadze, who was a Georgian Dream activist at the time, was not allowing the cameraman to do his job. He was threatening both the journalist and cameraman with physical assault if they came to Lanchkhuti again. The incident occurred after a football game between "Sioni" Bolnisi and "Guria" Lanchkhuti.

According to Lado Menabde, investigation was stopped shortly. Several months ago he testified to the law enforcers, but no results of investigation are known to him.

The MDF requested information on this incident from the Lanchkhuti regional office of MIA. In the response letter MIA regional office informed us that the criminal investigation had been launched not regarding the illegal interference into professional activity of journalist, but for damaging the door of the National Movement's office, on the basis of Part 1, Article 187 of the Criminal Code. According to Deputy Head of Lanchkhuti District Division of MIA Levan Chkhaidze there is no criminal investigation against any particular person regarding this case.

Information Centers Network made a statement regarding the incident on 28 October 2015,¹¹ and called on the MIA and the Prosecutor's Office to provide adequate response to the incident.

6.4. UNLAWFUL DETENTION

All three cases of unlawful detention were against the employees of media outlet critical of the government – Tabula TV. Two cases of these were not directly related to the journalists' professional activities and concerned the detainees' civil protest and freedom of expression in critique of the government on certain issues (Gazprom and "Stop Russia"). In the third case, Tabula's photographer was engaged in his professional activities during the rally against Panorama Tbilisi project, connected to the former Prime Minister Bidzina Ivanishvili.

Detention of Tabula photographer Alexander Giorgadze

On 19 July Tabula website photographer Alexander Giorgadze was arrested for alleged petty hooliganism and resistance to the police at the rally against Panorama Tbilisi.

¹⁰ <http://news.ge/ge/news/story/115766-qartuli-otsnebis-aqtivistma-nugzar-tsintsadzem-rustavi-2-is-zhurnalists-da-operators-sheuratskhyofa-miayena>

¹¹ <http://www.ick.ge/rubrics/society/24306-i.html>

According to the MIA, ten individuals were arrested during the rally against Panorama Tbilisi, near the Chancellery. Other 9 individuals were arrested for petty hooliganism. One of them was also accused on the basis of Article 45 – illegal use of small amount of drugs without doctor’s prescription.

Alexander Giorgadze was also arrested on 19 October 2014, at the protest rally near the house of the Prime Minister of Georgia.

Detention of Tabula director and producer for putting up posters in the street

On 16 October 2015, Tabula director Tamar Chergoleishvili, Tabula chief producer Lexo Machavariani and student Salome Khvadagiani were detained on Rustaveli Avenue. The reason for the detention was putting up posters for the campaign against Gazprom on the construction fence and lighting pole.

The posters depicted cartoons of former Prime Minister Bidzina Ivanishvili and Gazprom. Notably, there were other posters on the same construction fence too.

The police officers drew up a legal violation report on the basis of Part 1, Article 150 of the violations code. According to this article, “making various types of inscriptions, drawings or symbols on building facades, shop windows, fences, columns, trees without authorization, also putting up placards, slogans, banners at places not allocated for this purpose” is a violation causing damage to property of a self-governing entity.

Later the detainees were released. Tbilisi City Court acknowledged the detainees as violators.

According to the Public Defender Ucha Nanuashvili, detention of these individuals for putting up cartoons unjustifiably limited freedom of expression.

Detention of tabula producer at the “Stop Russia” rally

On 18 July 2015 Tabula TV producer Lexo Machavariani was detained at the Stop Russia rally near the Chancellery, on the basis of Articles 166 and 173 of the Administrative Violations Code – petty hooliganism and resistance to the law enforcement officer.

According to the information disseminated by Tabula, Lexo Machavariani and other organizers of the rally were forced to move the car with the equipment required for the rally away from the spot of the rally. The footage of the incident shows that when being detained, Lexo Machavariani was not informed about the legal basis of his detention. The court decided to drop administrative case against Lexo Machavariani.

On 22 July 2015 the Public Defender issued a statement saying that during the hearing the representatives of the law enforcement authorities brought Lexo Machavariani's words "shameful police" as a supposed sign of petty hooliganism. According to the Public Defender, with this the police excessively narrowed the margins of freedom of expression.

6.5. SUMMONING JOURNALISTS AS WITNESSES

Summoning journalists to the prosecutor's office as witnesses was related to coverage of the issues of high public interest and was mostly associated with one and the same TV channel – Rustavi 2. One story was prepared based on information from a confidential source; the other referred to a public statement made at a press conference, which, along with other media outlets, was also covered by Rustavi 2 TV; however, only the representatives of the latter were summoned by the prosecutor's office as witnesses.

Summoning Rustavi 2 TV journalist, Davit Kashiashvili as a witness in connection with the story prepared by him based on information from an anonymous source

On December 17 the prosecutor's office summoned Rustavi 2 TV journalist, Davit Kashiashvili as a witness. The investigation showed interest towards the story prepared by him and aired by the main news program of Kurieri on December 16¹², where an anonymous source – former employee of women's colony – spoke about a meeting of GD lawmakers, Eka Beselia and Manana Kobakhidze with prisoners and a corrupt bargain of the two lawmakers with one of the prisoners. Information provided by Kurieri's confidential source was in line with the earlier remarks made by Aleko Elisashvili, an independent member of the Tbilisi City Council (Sakrebulo), who claimed that "influential politicians" were involved in the influence peddling.

Journalist Davit Kashiashvili exercised his right not to disclose the source; he did not answer the questions asked by investigation and refused to give a testimony.

According to Article 11(1) of the Law on Freedom of Speech and Expression, the sources of professional secrets shall be protected by an absolute privilege, and nobody shall have the right to require disclosure of the source. In litigation on the restriction of the freedom of speech, the respondent shall not be obliged to disclose the source of confidential information. According to Article 11(2) of the same law, disclosure of confidential information without the consent of its owner or, in cases determined by the law, without a grounded decision of the court, shall be unacceptable.

¹² Kurieri, Rustavi 2, December 16, 2015 <http://rustavi2.com/ka/news/34421>

Summoning Rustavi 2 TV journalist, Natia Trapaidze as a witness in connection with the statements made at a press conference

On December 17 the prosecutor's office summoned another Kurieri journalist, Natia Trapaidze. This time the investigation had some questions in connection with a public statement made at a press conference. In particular, the journalist covered the press conference organized by the families of Irakli Pirtskhalava and Giorgi Tsaadze; the both men were arrested in connection to death of two persons in a police operation in 2006¹³. During the press conference, Judge Badri Kochlamazashvili was accused of taking a bribe. The investigation wanted to clarify what the journalist knew about the statements made by the families of Pirtskhalava and Tsaadze. The same press conference was also covered by other media outlets, but only the Rustavi 2 TV journalist was summoned to the prosecutor's office. Trapaidze went to the prosecutor's office, but she exercised her right to silence and did not give a testimony. It should be noted that members of the Pirtskhalava and Tsaadze families were also summoned by the prosecutor's office as witnesses on December 14 to give a testimony in connection with their public accusations.

According to paragraph "h" of article 50 of the Criminal Procedure Code of Georgia, journalists do not have to act as witnesses in connection with the information received in the process of their professional activities.

6.6. COERCION INTO CHANGING TESTIMONY

One case involving coercion of a journalist into changing her testimony is being investigated.

Coercion of Adjara TV journalist into changing her testimony

On 30 September 2015 the car of Kobuleti Bureau of Adjara TV was hijacked. Journalist Nino Inaishvili testified to the police on this incident, after which, according to her, the head of Kobuleti police Zakaria Gurchiani met her in the police office yard and asked her to change her testimony. According to Batumelebi newspaper, the probable hijacker is a relative of Rati Megreldze, Deputy Gamgebeli of Kobuleti.

Journalist Nino Inaishvili issued the recording showing Zakaria Gurchiani's attempt to coerce her into changing her testimony. Coercion of a witness into changing the testimony involves elements of crime covered by Article 372 of the Georgian Criminal Code.

According to the MIA, the prosecutors are investigating the case of the head of Kobuleti police Zakaria Gurchiani.

¹³ Kurieri, Rustavi 2, December 9, 2015 <http://rustavi2.com/ka/news/33818>

6.7. RESTRICTION OF PUBLIC GATHERINGS

Attempts to Thwart Rustavi 2 TV Concerts

In summer 2015, Rustavi 2 TV announced about its plans to hold concerts in various cities of Georgia in frames of its campaign “Rustavi 2 for You”. However, the organizers faced some problems in several cities that aroused doubts about the attempts to thwart the TV channel’s concerts.

After its oral consent, the Kutaisi Mayor’s Office sent an official letter to Rustavi 2 TV a day before a planned concert and cited rehabilitation works as the reason behind its refusal to host the event. But later the concert was still held in Kutaisi.

The TV channel faced similar problems in Poti and Batumi, where holding of an alternative event was cited as the reason for refusal. Rustavi 2 TV planned to hold concerts in Batumi and Poti on August 1 and August 2, respectively. On July 28 the TV channel received a response from the Poti Mayor’s Office; the latter explained that a concert dedicated to the local youth was planned on that day and therefore, the TV channel’s request was rejected. Rustavi 2 TV pointed at a deliberate campaign against the channel. It said that local TV channel had not announced about the plans of the Poti Mayor’s Office and respectively, local population had no information about the planned concert, unlike Rustavi 2 TV, which announced about its plans to hold a concert long ago.

The Batumi Mayor’s Office also cited other planned events as the reason for refusal. So, the TV channel held the planned concerts in Poti and Batumi later.

Holding of concerts was made possible after the civil society organizations expressed criticism in this regard. The Coalition for Media Advocacy released a statement¹⁴ slamming local authorities for creating artificial obstacles to the TV channel.

6.8. BLOCKING A FACEBOOK PAGE

Blocking of the “13 June Volunteers Community” page

In June 2015 personal pages of all administrators of the 13 June Volunteers Community Facebook group were simultaneously blocked, resulting in the abolishment of the group.

Ministry of Internal Affairs launched investigation into this incident. According to the Ministry’s information, the case was investigated by the Cyber Crime Division of the Criminal Police Department, on the basis of Article 284 of the Criminal Code, which regulates an unauthorized access to computer system.

¹⁴ Statement released by Coalition for Media Advocacy <http://www.media.ge/ge/portal/news/303714/>

7 IMPLEMENTATION OF FREEDOM OF EXPRESSION

CHAPTER OF ACTION PLAN OF THE GOVERNMENT OF GEORGIA ON THE PROTECTION OF HUMAN RIGHTS 2014-2020

On 30 April 2014, the parliament of Georgia adopted the National Strategy for the Protection of Human Rights in Georgia 2014-2020.¹ By its decree №445 dated 9 July 2014,² the government of Georgia approved the Action Plan on the Protection of Human Rights 2014-2015.³ Following the same decree, the Inter-agency Coordinating Council was established. The Council is led by the Prime Minister of Georgia and comprises 23 members from the executive branch whilst representatives of legislature, judiciary, local nongovernmental organizations, international organizations and the Georgian Bar Association (15 members in total) sit on the council with deliberative vote.

The Council, the majority of which represent government ministries, coordinates the implementation and monitoring of the Action Plan. It is accountable to the government of Georgia and the Prime Minister. The Council is required to submit an annual report on the implementation of the Action Plan to the government of Georgia no later than 15 March and to the parliament of Georgia no later than 31 March of any one year. The support to the activity of the Council is provided by the Human Rights Secretariat created at the Government Administration.

The Media Development Foundation (MDF) carried out the monitoring of the implementation of Chapter IX (Freedom of Expression) of the Action Plan, which, for its part, consists of three objectives:

- 9.1. Limitation and prevention of interference in the professional activities of journalists;
- 9.2. Identification and elimination of current legislative ambiguities in relation to freedom of expression;
- 9.3. Provision of access to information.

The aim of monitoring was to identify problems in the implementation of the Action Plan, to assess the implementation of activities envisaged in the Action Plan by relevant responsible bodies, and to draw up recommendations.

METHODOLOGY

The monitoring was based on the analysis of documents, which, among others, involved the study of the interim report on the implementation of the government Action Plan on Human Rights for the 2014 year, endorsed by the government of Georgia by its decree dated 2 June 2015,⁴ and the 2014 report on the

¹ <http://yourhumanrights.ge/documents/national-human-rights-strategy-of-georgia/4>

² <http://bit.ly/1SboHX0>

³ <http://yourhumanrights.ge/discussion/>

⁴ <https://matsne.gov.ge/ka/document/view/2871136>

protection of human rights and freedoms prepared by the Public Defender of Georgia.⁵ To double check and verify the information, public information was sought from relevant entities.

To study the incidents of interference in the professional activities of journalists, the monitoring applied two indicators that were specified in the Action Plan: the report of the Public Defender and the statistics provided by law enforcement agencies. Apart from these, the third indicator was applied, namely, media reports on separate incidents of interference in journalistic activities which, pursuant to paragraph 1, Article 101 of the Criminal Procedures Code, constitute the ground for launching investigations. According to this Article, a ground for investigation may be the information supplied to an investigator or a prosecutor, information published in media, also circumstances revealed in the process of criminal proceedings. The correlation of these three indicators helps reveal such incidents that were left without reaction on the part of law enforcement bodies.

1. LIMITATION AND PREVENTION OF INTERFERENCE IN THE PROFESSIONAL ACTIVITIES OF JOURNALISTS

The first objective of Chapter IX of the government action plan (Freedom of Expression) envisages the limitation and prevention of interference in the professional activities of journalists in order to ensure freedom of expression. Towards this end, the action plan specifies three activities:

- 9.1.1. Swift and effective investigations by the investigative authorities into interference in the professional activities of journalists;
- 9.1.2. Appropriate qualification of crimes by the Prosecutor's Office in case of interference in the professional activities of journalists;
- 9.1.3. Generation of statistics by investigative authorities reflecting registered incidents of interference in the professional activities of journalists and the resolution of such incidents.

The Action Plan identifies the Main Prosecutor's Office and the Ministry of Internal Affairs as entities responsible for the implementation of these activities, and specifies a report of the Public Defender and relevant statistics generated by law enforcement agencies as performance indicators of these activities.

Each activity is analyzed according to the abovementioned three indicators which were applied in the monitoring: 1) Public Defender's reports, 2) special statistics generated by investigative authorities, and 3) media reports about interference in professional activities of journalists. The report starts with the analysis of the third activity – the generation of special statistics, i.e. proper registration of incidents, since without assessing this activity it would be difficult to analyze first and second activities. The implementation of the first and second activities is reviewed thereafter.

1.1. Generation of special statistics

The third activity of Chapter IX (Freedom of Expression) envisages the generation of special statistics by investigative authorities, which must reflect the number of registered crimes as well as the number of such crimes solved.

⁵ Public Defender of Georgia; The Report on the Situation of Protection of Human Rights and Freedoms in Georgia 2014. <http://www.ombudsman.ge/uploads/other/2/2983.pdf> pg. 289.

Even though the Action Plan on the Protection of Human Rights does not limit the interference in the professional activities of journalists to only those facts that may be qualified as such offenses pursuant to only one article, namely, Article 154 of the Criminal Code, the 2014 interim report cites criminal proceedings instituted on the basis of this Article alone. By this approach, law enforcement agencies and the Interagency Coordinating Council opt for a narrow interpretation of the notion of “interference in the professional activity of journalists” and apply only the name sake Article 154 of the Criminal Code to offenses of this category.⁶ However, the incidents cited by the Public Defender’s report, in the chapter concerning investigations into alleged crimes against journalists, show elements of offences envisaged by Articles 239, 125, 156, 151 and 353 of the Criminal Code. Such an attitude of the Council is conceptually wrong because journalists may be prevented from performing their professional activities not only by illegal restriction of freedom, but also by eavesdropping, blackmailing and other forms of threat and intimidation. The information provided in the interim report, however, does not provide full picture and consequently, the data generated by law enforcement agencies is incomplete.

The chapter on freedom of expression of the Human Rights Secretariat’s interim report on the implementation of Action Plan, which covers the year 2014, cites three cases into which investigations were initiated under Article 154 of the Criminal Code. As a result of investigations three persons were revealed, who committed crimes in two cases. The hearings on the merits of these two cases were under way in the Tbilisi City Court. The study of the 2014 report of the Public Defender, undertaken in parallel with the government report, and the media monitoring conducted by the Media Development Foundation to reveal incidents of alleged interference in professional activities of journalists, showed inconsistency among these three indicators. The table below reflects those cases which were revealed through all three indicators. Those cases that were cited in the reports of the government or Public Defender are omitted from the media monitoring column.

Table 1. Facts of interference in professional activities of journalists in 2014, by three indicators

	FACTS REPORTED IN MEDIA	2014 INTERIM REPORT OF THE GOVERNMENT ON THE IMPLEMENTATION OF HUMAN RIGHTS ACTION PLAN	PUBLIC DEFENDER’S REPORT 2014
1	Secret recording equipment was found in the Rustavi 2 TV company office. <i>6 May, 2014</i>	Journalist Ia Bojgua was illegally prevented from performing her professional activity. <i>12 June, 2014</i>	Representatives of Free Zone physically abused Zaza Davitaia, a journalists of Asaval Dasavali newspaper. <i>30 September, 22 October, 2014</i>
2	Security staff and a producer of a singer Gogoriy Leps restricted freedom to Nino Metreveli, a Maestro TV company journalist. <i>7 December, 2014</i>	Akhmeta regional department of the Interior Ministry, first, initiated and then, suspended an investigation into the illegal interference in the professional activity of journalist of Gela Mtivlishvili, Kakheti Information Center. <i>10-31 July, 2014</i>	Natia Mikiashvili, a journalist of Anatomia TV program, alleged she was intimidated by the former head of General Inspection of Interior Ministry, Zviad Janqarashvili. <i>23 September, 2014</i>

⁶ 1. Illegal interference in professional activities of journalists, i.e. coercion into spreading or not spreading information, shall be punishable by fine or socially useful work from one hundred and twenty hours to one hundred and forty hours, or by correctional labor for up to two years.
2. The same action committed under the threat of violence or by using one’s official position, shall be punishable by fine or imprisonment for up to two years with or without deprivation of the right to occupy a position or pursue a particular activity for up to three years.

3	<p>Interior Ministry officers intimidated Tamuna Uchidze, a journalist of Samkhretis Karibche newspaper.</p> <p><i>December, 2014</i></p>	<p>Investigation by Zugdidi regional department of the Interior Ministry re: illegal interference in the professional activity of Nato Berulava, Samegrelo-Zemo Svaneti regional reporter of the Georgian Public Broadcaster.</p> <p><i>2 September, 2014</i></p>	<p>Journalist Jaba Ananidze was intimidated by the former head of human rights commission of the Supreme Council of Adjara, Medea Vasadze.</p> <p><i>June, 2014</i></p>
4	<p>Aleksandre Giorgadze, a photographer of Tabula TV company, was detained during a protest rally outside the prime minister's residential house.</p> <p><i>19 October, 2014</i></p>		
5	<p>During the patrol police raid, police officers forced Giorgi Sikharulidze, a journalist of Tabula TV company, to get off his car, insulted him verbally and deleted filmed video material from his mobile phone.</p> <p><i>24 August, 2014</i></p>		
6	<p>During the patrol police raid, police officers deleted video material filmed by Nata Dzvelishvili, a media.ge journalist, and her companion and detained one person.</p> <p><i>7 September, 2014</i></p>		
7	<p>Assets of Jemal Verdzadze and Giorgi Surmanidze, co-founders of Batumi Channel 25 TV company, were seized and employees of prosecutor's office tried to coerce them into false confession.</p> <p><i>December, 2013; January, 2014</i></p>		
8	<p>General Director of TV company Rustavi 2, Nika Gvaramia, declared that his email and skype accounts were hacked.</p> <p><i>17 October, 2014</i></p>		
9	<p>During the local self-government elections, a single-seat candidate from the Georgian Dream coalition, Iakob Makasarashvili, prevented Droanews.ge journalists from filming in the territory around the polling station.</p> <p><i>15 June, 2014</i></p>		
10	<p>During the local self-government elections in Zugdidi, a tspress.ge journalist Merab Rodonaia was prevented from performing his professional job and was verbally abused in the headquarters of a single-seat candidate from the Georgian Dream, Irakli Gogokhia.</p> <p><i>13 June, 2014</i></p>	<p>The case of Merab Rodonaia, a journalist of tspress.ge, is not reflected in the 2014 government report, although according to information provided by the Human Rights Secretariat, the investigation into this case was initiated under Paragraph 1 of Article 150 of the Criminal Code.</p>	

As seen from the above table, three cases cited in the interim government report do not coincide with those three cases that are cited in the Public Defender's report, including the cases to which law enforcement agencies reacted. In particular, the 2014 report of the Public Ombudsman include the following cases:

1. On 30 September and 22 October 2014, representatives of Free Zone physically abused Zaza Davitaia, a journalists of Asaval Dasavali newspaper. An investigation into the September incident was initiated under Paragraph 1 of Article 353⁷ and Subparagraph A of Paragraph 2 of Article 239⁸ of the Criminal Code of Georgia. Another investigation into the October incident was launched under Paragraph 1 of Article 125⁹ of the Criminal Code and on 24 October, a suspect A. K. was charged with a crime envisaged in Subparagraph A of Paragraph 3 of Article 156.¹⁰
2. On 23 September 2014, Natia Mikiashvili, a journalist of Anatomia TV program, alleged that when preparing a report, she was threatened by the former head of General Inspection of Interior Ministry, Zviad Janqarashvili, while her husband was forced to leave his job at the Interior Ministry. According to Public Defender's report, the investigation into this incident was initiated under Article 151 of the Criminal Code. The interim government report on human rights does not contain any information about results of this investigation.
3. On 9 June 2014, a journalist or regional broadcaster TV Channel 25, Jaba Ananidze, alleged that his investigative report titled "Highest degree of comfort" was followed by a threat from the former head of human rights commission of the Supreme Council of Adjara, Medea Vasadze. The journalist released a recorded phone conversation in which Medea Vasadze, then member of the ruling coalition, threatened the journalist and made hints about his sexual orientation. This phone conversation triggered protest among media outlets and nongovernmental sector. According to Public Defender's report, investigation was not launched into this case because prosecutor's office did not find in it any element of the criminal offence envisaged by the Criminal Code.

Incidents reported in media were not reflected either in the interim government report or Public Defender's report. Investigative authorities are obliged to start investigations, under Article 101 of the Criminal Procedures Code, into those cases that have elements of criminal offence and became known from media. The monitoring of Media Development Foundation detected additional nine cases among which were several high-profile incidents such as the discovery of secret recording equipment in the office of critical TV channel Rustavi 2, intimidation of a journalist (Samkhretis Karibche newspaper) by police, detention of a photo reporter (Tabula TV company) outside the prime minister's house, illegal restriction of freedom to a journalist (Maestro TV company), prevention of journalists and citizen journalists from filming during police raids, incidents during the local self-government elections and others.

The Media Development Foundation requested the information from the prosecutor's office to find out whether investigations were launched into the above cited cases and if yes, what was the result in each case. However, it proved impossible to obtain such information on the basis of the General Administrative Code. MDF filed a complaint against the decision of prosecutor's office under the Freedom of Information legislation.

⁷ Resistance, Threat or Violence against Protector of Public Order or Other Government Representative.

⁸ Hooliganism.

⁹ Assault and Battery.

¹⁰ Persecution under violence or threat of violence.

It is worth noting that the generation of statistics, which is envisaged by the government Action Plan, implies the generation of data on registered crimes that involve interference in journalistic activities as well as on cases solved. The interim government report does not provide the data on registered crimes; nor does it contain information how many facts out of those reported in media had elements of criminal offence, pursuant to Article 101 of the Criminal Procedures Code.

The Media Development Foundation approached the Main Prosecutor's Office of Georgia and the Ministry of Internal Affairs with the request to provide special statistics reflecting facts of interference in journalistic activities and the number of such cases solved. The provided data revealed inconsistency between the Action Plan and the information supplied by above-mentioned agencies. In particular, according to the Main Prosecutor's Office (23.12.2015) and the Ministry of Internal Affairs (27.11.2015), investigations were launched under Article 154 of the Criminal Code into three criminal cases; the investigation into one of these cases was terminated whilst the investigations into two remaining cases are in progress; however, no criminal proceeding was instituted on any of these cases. The interim government report provides different information, according to which "Three persons were identified as having committed crimes in two cases and the hearings on the merits of these cases are underway in the Tbilisi City Court."

1.2. Swift and effective investigations, appropriate qualification of crimes

Apart from generating statistics, Chapter IX of the Action Plan envisages: 1) Swift and effective investigations by the investigative authorities into interference in the professional activities of journalists; and 2) Appropriate qualification of crimes.

The information provided in the interim report of the Action Plan makes it impossible to comprehensively evaluate the implementation of the abovementioned activities as the report does lack information about essential circumstances of the case, the time of incident and the time span within which relevant agencies reacted to them. The absence of these data makes it impossible to assess timeliness and efficiency of investigations as well as appropriateness of qualification of crimes. The closed nature of law enforcement agencies further complicates the situation, making it difficult to obtain information from these agencies as they misinterpret relevance of General Administrative Code to criminal cases.

The information provided by the Human Rights Secretariat made it possible to partially fill this gap. In particular, the report cites the cases related to the following incidents:

- On 4 July 2014, the Chkhorotsku district department of Georgian Interior Ministry launched an investigation into a criminal case N071040714005 concerning the illegal interference into professional activity of journalist Ia Bojgua, which had elements of criminal offence envisaged in Paragraph 1 of Article 154 of the Criminal Code of Georgia. The investigation continues.
- On 10 July 2014, the Duisi unit of Akhmeta district department of Georgian Interior Ministry launched an investigation into a criminal case N017100714001 concerning the illegal interference into professional activity of journalist of the Kakheti Information Center, which had elements of criminal offence envisaged in Paragraph 1 of Article 154 of the Criminal Code of Georgia. Since the investigation did not reveal a crime envisaged by the criminal law, the investigation was terminated under Subparagraph A of Paragraph 1 of Article 105 of Criminal Proceedings Code on 29 August 2014.

According to information obtained from media, this case concerns the incident on 4 July 2014, when a candidate running for the head of Akhmeta municipality, Beka Baidauri, cancelled a pre-election meeting in the village of Duisi, Pnakisi Gorge, because a journalist from the Kakheti Information Center was attending the meeting. Before the start of the meeting, Baidauri rudely demanded from the journalist that he leave the meeting. People accompanying the candidate, namely, Ruslan Alkhanishvili, the representative of the head of municipality to the village of Omalo, and his brother Beslan Alkhanishvili, demanded from the journalist that he stop filming the meeting and then tried to seize the journalist's camera. Thereafter, the deputy head of municipality, Mate Kavtarashvili, addressed people who gathered for the meeting. According to the Kakheti Information Center, the deputy head of municipality said: "There is a traitor among people gathered here, who informed a journalist about this meeting and invited him to it and this traitor will definitely be punished." After that the meeting with the candidate for the head of municipality was discontinued.¹¹ The Young Lawyers' Association called on the law enforcement agencies to investigate the incident.¹²

- On 2 September 2014, the Zugdidi regional department of Georgian Interior Ministry launched an investigation into a criminal case N044020914017 concerning the illegal interference into professional activity of journalist of the Georgian Public Broadcaster Nato Berulava, which had elements of criminal offence envisaged in Paragraph 2 of Article 154 of the Criminal Code of Georgia. The investigation continues.

Additional information obtained from the Secretariat provides the ground to say that the investigation of cases is procrastinated and almost two-year-long investigations have not produced any result yet.

One should also note a selective approach of law enforcement bodies towards identical cases. In particular, the information additionally provided by the Human Rights Secretariat shows that the investigation is underway into a case which has elements of a criminal offense envisaged in Paragraph 1 of Article 150 of the Criminal Code;¹³ it concerns the incident outside the headquarters of a single-seat candidate from the Georgian Dream in Zugdidi, in which a tspress.ge journalist, Merab Rodonaia, was prevented from performing his professional activity during the 2014 local self-government elections. As the released video footage shows, the journalist was verbally insulted, moreover, water was splashed in his face and his camera was rudely pushed aside.¹⁴ Law enforcement agencies, however, did not react to an identical incident that happened during the local self-government elections, in which a single-seat candidate from the Georgian Dream, Ia Makasarashvili, prevented journalists of the news agency droanews.ge from filming in the public space, namely, the territory near one of polling stations in Tbilisi's Varketili district.¹⁵ The United National Movement called on the Interagency Commission for Free and Fair Elections to react to the incident.

¹¹ <http://ick.ge/rubrics/politics/18671-i.html>

¹² <http://ick.ge/rubrics/humanrights/18722-i.html>

¹³ Illegal restriction of a person's freedom to act, i.e. his/her physical or mental coercion to perform or not to perform an action the performance of which or abstinence therefrom is his/her right, or coercion to experience pressure upon oneself against one's own will, shall be punishable by fine or corrective labour for up to one year or by imprisonment for the same term.

¹⁴ Media.ge, 15 June 2014; www.media.ge/ge/portal/news/302895/

¹⁵ Media.ge, 15 June 2014; www.media.ge/ge/portal/news/302897/

2. IDENTIFICATION AND ELIMINATION OF CURRENT LEGISLATIVE AMBIGUITIES, IN RELATION TO FREEDOM OF EXPRESSION

To achieve this objective, the Action Plan considers the following activities: identification of existing legislative gaps and ambiguities relating to the freedom of expression; review of the notion of “interference” in the professional activities of journalists, if necessary; preparation of recommendations and drafts needed for amending legislative regulations in relation to switchover to digital broadcasting, if necessary.

It should be noted that the government carried out significant amount of works, including in the area of legislative regulations, in relation to switchover from analogue to digital broadcasting. According to 2014 interim report, the Digital Terrestrial TV Broadcasting Switchover Action Plan and Recommendations was developed in close cooperation with EBRD, broadcasters, governmental and nongovernmental organizations, National Communications Commission and experts and endorsed by the decree N206 of the government of Georgia on 10 February 2014. As envisaged by the Plan, the Law of Georgia on Electronic Communications was amended accordingly on 27 February 2014.

According to information which was additionally obtained from the Ministry of Economy and Sustainable Development by the MDF with regard to the year 2015, legislative changes designed to ensure the digital switchover were made to the laws On Broadcasting and On Electronic Communications in 2015 too. On 18 May 2015, with its decree N214, the government of Georgia approved the rule of providing socially vulnerable population with devices (set top boxes) necessary for the digital terrestrial broadcasting switchover; the rule defines principles of providing such devices and obligations of organizations involved in the process.

3. PROVISION OF ACCESS TO INFORMATION

To ensure the access to information, the Action Plan on the Protection of Human Rights 2014–2015 envisages only the drafting of legislative changes. The Ministry of Justice of Georgia is identified as the entity responsible for the development of the draft law.

The Ministry of Justice did not submit the draft law to the parliament within the timeframe specified in the Action Plan (2014–2015). Open Society Georgia Foundation, in cooperation with the Analytical Department of Justice Ministry and with the involvement of non-governmental organizations and experts, began its work on the freedom of information draft law in January 2014 and on 21 August 2015, submitted the initial version of the draft law to the Justice Ministry. According to the Action Plan, the Justice Ministry was supposed to finalize the draft law in 2015. According to the Justice Ministry, the working groups within the Analytical Department have not finished their work on the draft law yet and the draft law is now being discussed in the Anti-Corruption Council. The Analytical Department cannot specify the time when the document will be made public and when it will be submitted to the parliament for consideration. It is not known what kind of amendments the Ministry of Justice will introduce to that version of draft law which will be submitted to the parliament.

Chapter 3 of the General Administrative Code regulates legal norms of freedom of information. The adoption of a special law on the access to public information aims at consolidating norms regulating

public information into one normative act and at eliminating legislative shortcomings by taking into account problems that have emerged in practice.

The draft law drawn up by the Open Society Georgia Foundation envisages the establishment of a supervisory body. The parliament of Georgia will elect an independent body – the commissioner of freedom of information, which will not be subordinated to any state entity and high official. The commissioners will be able to provide consultations to institutions and, if need be, penalize public entities for the failure to issue information, to observe time frames as well as in other cases specified by the law. When the information cannot be processed, the draft law requires from a public entity to provide a seeker of information with all those documents that will enable him/her to process the information in a form he/she needs.

The draft law extends the circle of those entities that are required to issue public information and ensure transparency. In particular, the law will apply to all those entities which: (1) perform powers of public law; (2) are financed from the state budget; (3) are established by a state/local self-government body; (4) are created with the minimum 50 percent participation of a state/local self-government body.

The draft law envisages “the public interest test” which is well known in the international practice and requires from public entities to disclose secret information if it is in public interest and the benefit received from its disclosure outweighs the interests defended by withholding it.

RECOMMENDATIONS

- Law enforcement agencies that are responsible for the implementation of the Action Plan on Human Rights should eliminate all inconsistencies in the statistics on interference in professional activities of journalists and to this end, develop clear criteria;
- Data should not be generated only on incidents related to Article 154 of the Criminal Code and should cover other criminal offences committed against journalists;
- Investigative authorities should register and react to incidents reported by media concerning interference in professional activities of journalists;
- Cases on the restriction of freedom of expression cited in Public Defender’s report should also be taken into account when registering incidents;
- A report of the government should contain data on registered crimes involving interference in professional activities of journalists and on such solved cases;
- A report drawn up by the government should contain more information about factual circumstances of case as well as rationale behind the termination of investigation in order to make it possible to evaluate the qualification of case and speed and efficiency of investigation;
- The Ministry of Justice should speed up the submission of the draft law on freedom of information to the parliament in order to eliminate shortcomings in obtaining information from public entities.

8 BOARD OF TRUSTEES OF THE PUBLIC BROADCASTER — A PROBLEM OF APPOINTMENT OF CANDIDATES NOMINATED BY POLITICAL OPPOSITION

One of the legislative reforms the new government carried out after the 2012 parliamentary elections was the new rule of manning the Board of Trustees of the Georgian Public Broadcaster (GPB). However, problems started to emerge during the implementation of this legislative change.

The amendments providing for the new rule of manning the Board of Trustees were made to the Law of Georgia on Broadcasting in July and November 2013. They transformed the existing model of the GPB Board of Trustees and decreased the number of trustees from 15 to nine.¹ Moreover, the rule of election of trustees changed too. Under the previous model, all candidates for the trustees were selected through a competition announced by the President of Georgia whilst the trustees from these candidates were elected by the parliament. According to the new model, the Speaker of Parliament announces an open competition for the selection of candidates and sets up a selection commission which comprises representatives of civil society. Through public hearings, the commission shortlists candidates and submits them to the parliament while legislators, for their part, nominate candidates for trustees out of that shortlist. By the majority of vote, members of parliament elect two trustees nominated by the Public Defender, three trustees nominated by the Parliamentary majority, three trustees nominated by members of parliament not belonging to the parliamentary majority (i.e. parliamentary opposition), and one trustee nominated by the Supreme Council of Autonomous Republic of Adjara.²

The change in the election rule of trustees was assessed by the OSCE Representative on Freedom of the Media Dunja Mijatovic as a positive step. According to her, the legislative changes “improve the current law, ensuring greater pluralism and transparency in the work of the public broadcaster.”³ According to the analysis of legislative amendments, prepared by the OSCE Office of the Representative on Freedom of the Media,⁴ a smaller Board was considered potentially more effective whilst the new rule of election more approximated with the models practiced in European and other developed countries where the system of fully electing through an open competition is very rare as it allows for manipulation and poses a risk of unjustified intervention of various informal interested parties in the selection of candidates.

¹ Paragraph 1 of Article 24 of the Law of Georgia on Broadcasting.

² Paragraph 2 of Article 24 of the Law of Georgia on Broadcasting.

³ <http://www.civil.ge/eng/article.php?id=25889&search=>

⁴ Analysis of proposed amendments to the Law of Georgia “On Broadcasting”, OSCE, March, 2013. <http://www.osce.org/fom/100314?download=true>

In its essence, the new model is pluralistic as the board is formed by consensus of parties with opposing interests. That three candidates are to be nominated by political forces outside the parliamentary majority was also assessed as a positive step as it ensures the balance of political influence and interests inside the Board. According to the OSCE analysis, such explicit inclusion of the opposition is important in situations in which the ruling party has a large majority, which otherwise would mean that they could dominate the appointment process. The new regulation tries to safeguard against this domination. However, the incomplete implementation of the new model two years later of adopting the law has deprived this norm of its sense.

It has been more than two years after the enactment of the law that the parliament of Georgia has failed to achieve consensus on candidates nominated by the political opposition and the Board of Trustees still has two vacant places that are allocated to the opposition, therewith undermining the balance and diversity in the governing body of the broadcaster as it was initially envisaged by the legislation. The current composition of the Board of Trustees looks as follows:

Table 1. The composition of the Board of Trustees of Georgian Public Broadcasters and vacant places of the opposition

BOARD OF TRUSTEES			
MAJORITY: "GEORGIAN DREAM"	OPPOSITION	PUBLIC DEFENDER	SUPREME COUNCIL OF AUTONOMOUS REPUBLIC OF AJDARA
Natela Sakhokia	Ketevan Mskhiladze	Marina Muskhelishvili	Giorgi Kokhreidze
Grigol Gogelia	X	Lela Gaprindashvili	
Aleksandre Vakhtangov	X		

The parliament of Georgia voted on candidates for the trustees as many as four times but failed to achieve consensus regarding the nominees of the opposition in any of them. The chronology of votes on members to the Board of Trustees by the parliament is the following:

Table 2. The chronology of votes on candidates for the trustees in the parliament of Georgia (2013–2014).

DATE	MEMBERS ELECTED	MEMBERS NOT ELECTED
27 December 2013	Majority: Natela Sakhokia Public Defender: Marina Muskhelishvili Opposition: Ketevan Mskhiladze	Supreme Council of Ajara: Genadi Geladze Public Defender: Lela Gaprindashvili Opposition: Ninia Kakabadze
24 January 2014	Public Defender: Lela Gaprindashvili	Supreme Council of Ajara: Genadi Geladze
11 March 2014	Majority: Grigol Gogelia, Aleksandre Vakhtangov Supreme Council of Ajara: Giorgi Kokhreidze	Opposition: Ninia Kakabadze, Davit Kiziria
2 May 2014		Opposition: Ninia Kakabadze, Davit Kiziria

The former prime minister of Georgia and founder of nongovernmental organization Citizen, Bidzina Ivanishvili, linked the failure to man the Board of Trustees on the first attempt to the lack of information to society and publicly criticized the Speaker of Parliament David Usupashvili for speeding up the process:

“With regard to the Public Broadcaster let me recall a Georgian proverb: ‘haste makes waste.’ This is what happened to Davit Usupashvili. He hurried a little and did not provide enough information,” Ivanishvili said.⁵

After the May 2014 vote, in which the parliament voted against every opposition nominee, the secretariat of the Parliament Speaker did not announce a new competition for two vacancies in the Board of Trustees.

Within the framework of the 12th annual South Caucasus media conference, held in Tbilisi in September 2015, OSCE Representative on Freedom of the Media Dunja Mijatovic called on the parliament again to complete the manning of the Board of Trustees of Public Broadcaster as, according to her, it was necessary for the Board to operate effectively.⁶

The law does not provide for a mechanism to overcome a crisis in situations when parliamentary factions fail to arrive at consensus on various quotas as well as when the parliament fails to fulfill its obligation to announce a competition.

ROTATION OF TRUSTEES

The GPB Board of Trustees, comprising seven members elected at various times (see Table 2), held its first meeting on 21 May 2014, therewith starting to perform its powers defined in the law. However, with its decision of 14 June 2014,⁷ the Board postponed, until the election of remaining two trustees, the

⁵ Pirveli Radio, 4 February 2014; 2014 <http://pirveliradio.ge/?newsid=19557>

⁶ Media.ge, 30 September 2015. <http://www.media.ge/ge/portal/news/303847>

⁷ Minutes #273 of the Board of Trustees of Public Broadcaster; 14 June 2014. <http://gpb.ge/uploads/documents/05659515-1758-4088-b141-7056b4a81e9f12%20ivnisi.pdf>

enactment of that norm of the law which requires to draw lots to determine tenures of trustees. The Board Chairman justified this decision by saying that this would put members to be elected in future in an unequal condition and referred to the law which does not specify the exact time for casting lots.

By 2015 the terms in office of incumbent trustees were not defined. Pursuant to Paragraph 4 of Article 24 of the Law of Georgia on Broadcasting, the tenure of a trustee is six years whilst according to Paragraph 6 of the same Article, one third of trustees shall be rotated once every two years.

To ensure the rotation and the replacement of one third of trustees every two years, transitional provisions of the law of 2013 wording set different tenures for trustees elected for the first time after the enactment of the law. According to Paragraph 10 of the transitional provisions, the members of the Board of Trustees appointed after the entry into force of the law shall draw lots by which the tenures of the trustees shall be determined in the following manner: one third of the trustees shall be appointed for a two-year term, one third for a four-year term and one third for a six-year term. This rule, which is of one-off nature by its content and applies to the first composition of the Board of Trustees, was designed to ensure that trustees finish their terms in office and by that time new trustees have been elected, thereby achieving an automatic process of rotation of one third of the composition of the Board. In other words, had the Board be fully manned in 2014, a two-year term of three trustees would have expired in 2016 and they would have been replaced by new trustees, another three trustees would have finished their four-year tenures in 2018 whilst the remaining three trustees would have finished their six-year terms in 2020. Thus the principle of rotation would have been observed.

Given that the parliament failed to fully man the Board in time, at its meeting held on 12 June 2014, the seven-member Board of Trustees took a decision to postpone the draw (envisaged by the law) defining the tenures of trustees by lot until after two remaining trustees have been elected. This decision was justified on the ground that the law does not specify the time for casting lots.

The result of all this is the situation in which the tenures of trustees were not determined while the Board has been performing its duties since May 2014.

In its decision on postponing the draw, the current Board of Trustees indicated that the time of draw is not specified in the law. Indeed, the law does not specify a concrete term for casting lots, but the analysis of the norm makes it clear that the draw must be conducted upon the election of trustees. The law considers the manning of the Board as an entire process which must be completed within a reasonable timespan. The protraction of the process gave rise to a crisis whilst the non-conduct of the draw brought about the result when the tenure of a trustee may, at best, be determined at the time of its expiry.

A gradual replacement of trustees is an important norm which decouples this replacement from political changes. In due time, the OSCE Representative on Freedom of the Media Dunja Mijatovic criticized the new draft law for the dismissal of trustees altogether instead of gradual replacement.⁸ In its 2014 ruling concerning the unconstitutionality of early termination of tenure of members of the previous Board of Trustees,⁹ the Constitutional Court of Georgia noted that the tenure determined by the law is related to public interest such as non-interference in the activity of a high official. “For example, a judge, Public Defender, General Auditor of State Audit Service and members of independent regulatory bodies belong to the category of high public officials whose tenure, specified by the law, is a necessary condition for ensuring noninterference in their activities and their independence,” the constitutional ruling says.

The Board of Trustees responded upon the publication of MDF’s report on this topic on February 8, 2016. On February 25, 2016 at the meeting of the GPB Board of Trustees drawing of lots were conducted and terms for acting as well as non-elected members were defined.

RECOMMENDATION

In order to ensure the fulfillment of positive aims envisaged in the new regulation, it is necessary to implement them in practice. Any norm of material content loses this content if the procedures do not guarantee their fully-fledged implementation.

- The parliament of Georgia should fulfill the requirements of the law, announce a competition for two vacant places allocated for the opposition and fully man the Board of Trustees in order to ensure the balance of different political influence and interests in the management of the Public broadcaster, as it is required by the new model in the law.
- The parliament of Georgia should revise the law and provide for legal mechanisms to overcome crisis situations in order to exclude any possibility to disregard legal norms in future, as it happened in the implementation.

⁸ Analysis of proposed amendments to the Law of Georgia “On Broadcasting”, OSCE, March, 2013. <http://www.osce.org/fom/100314?download=true>

⁹ The ruling of the Constitutional Court on the case Citizens of Georgia Davit Kandelaki, Natalia Dvali, Zurab Davitashvili, Emzar Gogvadze, Giorgi Meladze and Mamuka Pachuashvili vs Parliament of Georgia; 11 April 2014. <http://constcourt.ge/ge/legal-acts/judgments/saqartvelos-moqalaqeebi-davit-kandelaki-natalia-dvali-zurab-davitashvili-emzar-gogvadze-giorgi-meladze-da-mamuka-fachuashvili-saqartvelos-parlamentis-winaagmdeg-832.page>

