

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 | Interior Ministry officers intimidated Tamuna Uchidze, a journalist of Samkhetis Karibche newspaper. <i>December, 2014</i> | 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. <i>2 September, 2014</i> | Journalist Jaba Ananidze was intimidated by the former head of human rights commission of the Supreme Council of Adjara, Medea Vasadze. <i>June, 2014</i> |
| 4 | Aleksandre Giorgadze, a photographer of Tabula TV company, was detained during a protest rally outside the prime minister's residential house. <i>19 October, 2014</i> | | |
| 5 | 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. <i>24 August, 2014</i> | | |
| 6 | 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. <i>7 September, 2014</i> | | |
| 7 | 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. <i>December, 2013; January, 2014</i> | | |
| 8 | General Director of TV company Rustavi 2, Nika Gvaramia, declared that his email and skype accounts were hacked. <i>17 October, 2014</i> | | |
| 9 | 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. <i>15 June, 2014</i> | | |
| 10 | 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. <i>13 June, 2014</i> | 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. | |

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 officeis 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.