

1 LEGAL ENVIRONMENT

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>